

OFFICE OF JUDICIAL EDUCATION 2021



March 2021

TO: Holders of *Wisconsin Jury Instructions – Civil*

FROM: Bryce Pierson, Office of Judicial Education – Wisconsin Court System
Legal Advisor – Jury Instructions
Reporter, Wisconsin Civil Jury Instructions Committee

SUBJECT: 2021 Supplement to *Wisconsin Jury Instructions – Civil*

The enclosed 2021 supplement to *Wisconsin Jury Instructions – Civil* was recently approved by the Wisconsin Judicial Conference’s Civil Jury Instructions Committee. It is the fifty-second supplement in the publication’s 61-year history.

Content. The 2021 supplement updates the publication on legislative actions and judicial decisions through January 21, 2021.

Information. For information on the status of the Committee’s work, please contact Bryce Pierson at bryce.pierson@wicourts.gov.

WIS JI-CIVIL

2021 Supplement

Filing Instructions

Volume I

Remove Old Pages Entitled

Insert New Pages Entitled

Title Page	Title Page (“2021 Supplement (“With 2020 Supplement” in lower left corner) (Release No. 52)” in lower right corner)
Committee Members (p. ii).....	Committee Members (1959-2021) (p.ii)
Summary of Contents (© 2020).....	Summary of Contents (2021)
Table of Contents (© 2020)	Table of Contents (2021)
No instruction.....	JI-358 (2021)
JI-1023 (© 2019).....	JI-1023 (2021)
JI-1023.5 (© 2020).....	JI-1023.5 (2021)
JI-1023.6 (© 2016).....	JI-1023.6 (2021)

Volume II

Title Page	Title Page (“With 2021 Supplement (“With 2020 Supplement” in lower left corner) (Release No. 52)” in lower right corner)
Table of Contents (© 2020)	Table of Contents (2021)
JI-1500 (© 2006).....	JI-1500 (2021)
JI-1900.4 (© 2020).....	JI-1900.4 (2021)
JI-2400 (© 2018).....	JI-2400 (2021)
JI-2418 (© 2017).....	JI-2418 (2021)

Volume III

Title Page	Title Page (“With 2021 Supplement (“With 2020 Supplement” in lower left corner) (Release No. 52)” in lower right corner)
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**Remove Old
Pages Entitled**

**Insert New
Pages Entitled**

Table of Contents (© 2020)	Table of Contents (2021)
JI-3200 (© 2012).....	JI-3200 (2021)
JI-5001 (© 2003).....	JI-5001 (2021)
JI-8035 (© 2015).....	JI-8035 (2021)
Table of Cases Cited (© 2020)	Table of Cases Cited (2021)
Index (© 2020).....	Index (2021)

2021 Supplement filed by _____, _____.
initials date

FOR QUESTIONS:

If you have any questions about these filing instructions or the civil jury instructions, please contact the committee's reporter, Bryce Pierson at bryce.pierson@wicourts.gov.



WISCONSIN JURY INSTRUCTIONS

CIVIL

VOLUME I

Wisconsin Civil Jury
Instructions Committee

- 2021 Supplement (Release No. 52)

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Reporter: Bryce Pierson, Office of Judicial Education – Wisconsin Court System

WIS JI-CIVIL

SUMMARY OF CONTENTS

Tributes

Memorials

1981 Foreword

1978 Preface

1960 Introduction

GENERAL INSTRUCTIONS

Right to a Jury Trial	1
Suggested Order	10
Preliminary Instructions	50-66
Jurors' Duties	100-197
Evidence, Burdens, and Presumptions	200-358
Witnesses	400-425
Accrual of Action	950

NEGLIGENCE

Standard of Care Required	1000-1029
Duties of Persons in Specific Situations	1030-1413
Cause	1500-1511
Comparative Negligence	1580-1595
Imputed Negligence	1600-1610
Damages	1700-1897
Safe Place	1900.2-1911
Nuisance	1920-1932

INTENTIONAL TORTS

Assault and Battery	2000-2020
False Imprisonment	2100-2115
Federal Civil Rights	2151-2155
Conversion	2200-2201
Misrepresentation	2400-2420
Defamation	2500-2552
Misuse of Procedure	2600-2620
Trade Practices	2720-2722
Domestic Relations	2725
Business Relations	2750-2791
Civil Conspiracy; Injury to Business	2800-2822
Tort ImmunityBLaw Note	2900

CONTRACTS

General	3010-3095
Insurance	3100-3118
Breach of Warranty	3200-3230
Duties of Manufacturers and Sellers	3240-3310
Damages	3700-3760

AGENCY; EMPLOYMENT; BUSINESS ORGANIZATIONS

	4000-4080
--	-----------

PERSONS	5001-7070
----------------	-----------

PROPERTY	
General	8012-8060
Eminent Domain	8100-8145

TABLE OF CASES CITED

INDEX

WIS JI-CIVIL

TABLE OF CONTENTS

VOLUME I

GENERAL INSTRUCTIONS

Jurors' Duties

Inst. No.

1	Right to a Jury Trial: Law Note for Trial Judges (2017)
10	Suggested Order of Instructions: Negligence Cases (2018)
50	Preliminary Instruction: Before Trial (2020)
57	Juror Questioning of Witnesses (2014)
60	Notetaking Not Allowed (2011)
61	Notetaking Permitted (2011)
63	Transcripts Not Available for Deliberations; Reading Back Testimony (2011)
65	Preliminary Instruction: Use of an Interpreter for a Witness (2011)
66	Preliminary Instruction: Use of an Interpreter for a Juror (2011)
80	Recording Played to the Jury (2011)
100	Opening (2013)
103	Summary Exhibit (2013)
106	Submission on General Verdict (2010)
107	Submission on Ultimate Fact Verdict [Withdrawn 2011]
108	Submission on Ultimate Fact Verdict When Court Finds One or More Parties at Fault [Withdrawn 2011]
110	Remarks and Arguments of Counsel (2011)
115	Objections of Counsel (2015)
120	Ignoring Judge's Demeanor (2011)
125	Counsel's Reference to Insurance Company (2011)
130	Stricken Testimony (2011)
145	Special Verdict Questions: Interrelationship (2016)
150	Damage Question Answered by the Court (2005)
152	View of Scene (2011)
155	Question Answered by the Court (2011)
180	Five-Sixths Verdict (2017)
190	Closing: Short Form (2011)

191	Closing: Long Form (2017)
195	Supplemental Instruction Where Jury is Unable to Agree (2003)
197	Instruction after Verdict is Received (2010)

Evidence, Burdens, and Presumptions

200	Burden of Proof: Ordinary (2004)
202	Burden of Proof: Ordinary: Compensatory Damages (2005)
205	Burden of Proof: Middle (2016)
210	Burden of Proof Where Verdict Contains a Middle Standard Question [Withdrawn 1998]
215	Credibility of Witnesses; Weight of Evidence (2011)
220	Jury Not to Speculate [Withdrawn 1990]
230	Circumstantial Evidence (2011)
255	Driver's Manual: Use by Jury [Withdrawn 2011]
260	Expert Testimony (2017)
261	Medical or Scientific Treatise in Evidence (1989)
265	Expert Testimony: Hypothetical Questions (2011)
268	Opinion of a Nonexpert Witness (2013)
305	Measurements (1989)
315	Negative Testimony (2016)
325	Physical Facts (1989)
349	Presumptions and Permissive Inferences - Law Note for Trial Judges (2017)
350	Presumptions: Conflict as to Existence of Basic Fact; Evidence Introduced from Which Nonexistence of Presumed Fact May Be Inferred (2013)
352	Presumptions: Existence of Basic Fact Uncontradicted; Evidence Introduced from Which Nonexistence of Presumed Fact May Be Inferred (2013)
353	Presumptions: Deceased Person was Not Negligent (2003)
354	Presumptions: Conflict as to Existence of Basic Fact; No Evidence Introduced from Which Nonexistence of Presumed Fact Could Be Inferred (1991)
356	Permissive Inferences; <u>e.g., Res Ipsa Loquitur</u> (1989)
358	Subsequent Remedial Measures (2021)

Witnesses

400	Spoliation: Inference (2011)
405	Falsus in Uno (2018)
410	Witness: Absence (2015)

415	Witness: Prior Conviction (2011)
420	Impeachment of Witnesses: Prior Inconsistent or Contradictory Statements (1981)
425	Witness Exercising Privilege Against Self-Incrimination (2011)
950	Reasonable Diligence in Discovery of Injury (Statute of Limitations) (2016)

NEGLIGENCE

Standard of Care Required

1000	Unavoidable Accident (1989)
1001	Negligence: Fault: Ultimate Fact Verdict (2004)
1002	Gas Company, Duty to Customer (1989)
1003	Negligence, Gas Company, Duty in Installing Its Pipes, Mains, and Meters (1989)
1004	Negligent Versus Intentional Conduct (1995)
1005	Negligence: Defined (2016)
1006	Gross Negligence: Defined (2016)
1007	Contributory Negligence: Defined (2015)
1007.5	Contributory Negligence: Rescue Rule (2016)
1008	Intoxication: Chemical Test Results [Reflects Changes in 2003 Wisconsin Act 30] (2004)
1009	Negligence: Violation of Safety Statute (2010)
1010	Negligence of Children (© 2014)
1011	Attractive Nuisance: Ultimate Fact Question [Renumbered JI-Civil 8025 (2013)]
1012	Parents' Duty to Protect Minor Child (1989)
1013	Parent's Duty to Control Minor Child (2006)
1014	Negligent Entrustment (2017)
1014.5	Negligent Entrustment to an Incompetent Person (2017)
1015	Negligence in an Emergency [Renumbered JI-Civil-1105A 1995]
1019	Negligence: Evidence of Custom and Usage (1995)
1020	Negligence: Under Special Circumstances (2012)
1021	Negligence of Mentally Disabled (2006)
1021.2	Illness Without Forewarning (2002)
1022.2	Negligence of General Contractor: Increasing Risk of Injury to Employee of Subcontractor (2020)
1022.4	Negligence: Building Contractor (2016)
1022.6	Liability of One Employing Independent Contractor (2015)
1023	Medical Negligence (2021)
1023.1	Professional Negligence: Medical: Duty of Physician to Inform a Patient:

CONTENTS

WIS JI-CIVIL

- Special Verdict (2015)
- 1023.2 Professional Negligence: Medical: Duty of Physician to Inform a Patient (2015)
- 1023.3 Professional Negligence: Medical: Duty of Physician to Inform a Patient:
Cause (2015)
- 1023.4 Professional Negligence: Medical: Duty of Physician to Inform a Patient:
Contributory Negligence (2015)
- 1023.5 Professional Negligence: Legal—Status of Lawyer as a Specialist is
Not in Dispute (2021)
- 1023.5A Professional Negligence: Legal—Status of Lawyer as Specialist is in
Dispute (1997)
- 1023.6 Negligence of Insurance Agent (2021)
- 1023.7 Professional Negligence: Registered Nurses and Licensed Technicians Performing
Skilled Services (2016)
- 1023.8 Professional Negligence: Chiropractor-Treatment (2016)
- 1023.9 Professional Negligence: Chiropractor-Determining Treatability by Chiropractic
Means (1999)
- 1023.14 Professional Negligence: Dental (2016)
- 1023.15 Professional Negligence: Chiropractor, Dentist, Optometrist, or Podiatrist:
Duty to Inform a Patient: Special Verdict (2015)
- 1023.16 Professional Negligence: Chiropractor, Dentist, Optometrist, or Podiatrist:
Duty to Inform a Patient (2015)
- 1023.17 Professional Negligence: Chiropractor, Dentist, Optometrist, or Podiatrist:
Duty to Inform a Patient: Cause (2015)
- 1024 Professional Negligence: Medical: Res Ipsa Loquitur (2017)
- 1025 Negligence of a Common Carrier (2006)
- 1025.5 Bailment: Defined (2009)
- 1025.6 Duty of Bailor for Hire (1992)
- 1025.7 Bailment: Duty of Bailee under a Bailment for Mutual Benefit (2009)
- 1025.8 Bailment: Liability of a Gratuitous Bailor (2009)
- 1026 Bailment: Negligence of Bailee May Be Inferred (2005)
- 1026.5 Bailment: Negligence of Carrier Presumed (2005)
- 1027 Duty of Owner of Place of Amusement: Common Law [Renumbered
JI-Civil 8040 1985]
- 1027.5 Duty of a Proprietor of a Place of Business to Protect a Patron from
Injury Caused by Act of Third Person [Renumbered JI-Civil 8045 1986]
- 1027.7 Duty of Hotel Innkeeper [Renumbered JI-Civil 8050 1986]

- 1028 Duty of Owner of a Building Abutting on a Public Highway
[Renumbered JI-Civil 8030 1986]
- 1029 Highway or Sidewalk Defect or Insufficiency [Renumbered JI-Civil
8035 1986]

Duties of Persons in Specific Situations

- 1030 Right to Assume Due Care by Highway Users (1992)
- 1031 Conditional Privilege of Authorized Emergency Vehicle Operator (2016)
- 1032 Defective Condition of Automobile: Host's Liability (1992)
- 1035 Voluntary Intoxication: Relation to Negligence (2004)
- 1045 Driver's Duty When Children Are Present (1992)
- 1046 Contributory Negligence of Passenger: Placing Self in Position of Danger (1992)
- 1047 Contributory Negligence of Guest: Riding with Host (1992)
- 1047.1 Negligence of Guest: Active: Management and Control (1992)
- 1048 Driver, Negligence: Highway Defect or Insufficiency (1992)
- 1049 Pedestrian, Negligence: Sidewalk Defect or Insufficiency (1989)
- 1050 Duty of Persons with Physical Disability (2005)
- 1051 Duty of Worker: Preoccupation in Work Minimizes Duty (1995)
- 1051.2 Duty of Worker: When Required to Work in Unsafe Premises (1992)
- 1052 Equipment and Maintenance of Vehicles: General Duty (2008)
- 1053 Equipment and Maintenance of Vehicles: Headlights (2008)
- 1054 Equipment and Maintenance of Vehicles: Brakes (2008)
- 1055 Lookout (1997)
- 1056 Lookout: Camouflage (2013)
- 1060 Lookout: Backing (2008)
- 1065 Lookout: Entering or Crossing A Through Highway (2003)
- 1070 Lookout: Failure to See Object in Plain Sight (1992)
- 1075 Lookout: Guest (1996)
- 1076 Lookout: Guest's Duty to Warn (1992)
- 1080 Lookout: Limited Duty on Private Property (1992)
- 1090 Driver on Arterial Approaching Intersection: Lookout; Right of Way;
Flashing Yellow Signal (1992)
- 1095 Lookout: Pedestrian (2008)
- 1096 Duty to Sound Horn (2008)
- 1105 Management and Control (2008)
- 1105A Management and Control–Emergency (2016)
- 1107 Racing (2008)

CONTENTS

WIS JI-CIVIL

- 1112 Operation of Automobile Following Another (2015)
- 1113 Duty of Preceding Driver: Slowing or Stopping: Signaling (2008)
- 1114 Duty of Preceding Driver to Following Driver: Lookout (2008)
- 1115 Parking: Stopping: Leaving Vehicle Off the Roadway (2008)
- 1120 Parking: Stopping: Leaving Vehicle On the Roadway (2008)
- 1125 Parking: Stopping: Leaving Vehicle On or Off the Roadway:
Exception to Prohibition (2008)
- 1132 Stopped School Bus: Position on Highway (2008)
- 1133 School Bus: Flashing Red Warning Lights (2008)
- 1135 Position on Highway on Meeting and Passing (2008)
- 1140 Position on Highway on Meeting and Passing; Violation Excused (2008)
- 1141 Passing: Vehicles Proceeding in Same Direction (2008)
- 1142 Passing: Vehicles Proceeding in Same Direction: Obstructed View (2008)
- 1143 Passing: Vehicles Proceeding in Same Direction: In No Passing Zone or
Where Overtaken Vehicle Turning Left (2008)
- 1144 Passing: Vehicles Proceeding in Same Direction (2015)
- 1145 Res Ipsa Loquitur (2002)
- 1153 Right of Way: At Intersection with Through Highway (2008)
- 1155 Right of Way: At Intersections of Highways (2008)
- 1157 Right of Way: At Intersection of Highways: Ultimate Verdict Question (2008)
- 1158 Right of Way: To Pedestrian Crossing at Controlled Intersection (2008)
- 1159 Right of Way: Pedestrian Control Signal: Walk Signal (2008)
- 1160 Right of Way: To Pedestrian at Intersections or Crosswalks on Divided
Highways or Highways Provided with Safety Zones (2008)
- 1161 Right of Way: Pedestrian Crossing Roadway at Point Other Than
Crosswalk (1982)
- 1165 Right of Way: To Pedestrian at Uncontrolled Intersection or Crosswalk (2008)
- 1170 Right of Way: Blind Pedestrian on Highway (2008)
- 1175 Right of Way: Entering Highway from an Alley or Nonhighway
Access Point (2008)
- 1180 Right of Way: Funeral Processions; Military Convoys (2008)
- 1185 Right of Way: Green Arrow (2008)
- 1190 Right of Way: Green Signal (2008)
- 1190.5 Plaintiff and Defendant Each Claims Green Light in Their Favor (2008)
- 1191 Duty of Driver Entering Intersection with Green Light in Driver's Favor:
Lookout (2008)
- 1192 Duty of Driver Approaching Intersection When Amber Light Shows (2008)
- 1193 Red Traffic Control Light Signaling Stop (2008)
- 1193.5 Flashing Red Traffic Control Light (2008)

- 1195 Right of Way: Left Turn at Intersection (2008)
- 1200 Right of Way: Livestock (2008)
- 1205 Right of Way: Moving from Parked Position (2008)
- 1210 Right of Way: On Approach of Emergency Vehicle (2008)
- 1220 Right of Way: Pedestrian's Duty: At Pedestrian Control Signal (2008)
- 1225 Right of Way: Pedestrian's Duty: Crossing at Controlled Intersection
or Crosswalk (2008)
- 1230 Right of Way: Pedestrian's Duty: Crossing Roadway at Point Other than
Crosswalk (2008)
- 1235 Right of Way: Pedestrian's Duty: Divided Highways or Highways with
Safety Zones (2008)
- 1240 Right of Way: Pedestrian's Duty: Facing Green Arrow (2008)
- 1245 Right of Way: Pedestrian's Duty: Facing Red Signal (2008)
- 1250 Right of Way: Pedestrian's Duty: Standing or Loitering on Highway (2008)
- 1255 Right of Way: Pedestrian's Duty at Uncontrolled Intersection or
Crosswalk; Suddenly Leaving Curb or Place of Safety (2008)
- 1260 Position on Highway: Pedestrian's Duty; Walking on Highway (2008)
- 1265 Right of Way: Persons Working on Highway (2008)
- 1270 Right of Way: When Vehicle Using Alley or Nonhighway Access to Stop (2008)
- 1275 Right of Way: When Yield Sign Installed (2008)
- 1277 Safety Belt: Failure to Use (2009)
- 1278 Safety Helmet: Failure to Use (2009)
- 1280 Skidding (2008)
- 1285 Speed: Reasonable and Prudent; Reduced Speed (2008)
- 1290 Speed: Fixed Limits (2008)
- 1295 Speed: Special Restrictions for Certain Vehicles (2008)
- 1300 Speed: Impeding Traffic (2008)
- 1305 Speed: Failure to Yield Roadway (2015)
- 1310 Speed: Obstructed Vision (2008)
- 1315 Speed: Obstructed Vision: Nighttime (2008)
- 1320 Speed: Camouflage (1992)
- 1325 Stop at Stop Signs (2008)
- 1325A Stop at Stop Signs [Alternate] (2008)
- 1330 Stop: Emerging from an Alley (2008)
- 1335 Emerging from a Private Driveway or Other Nonhighway Access (2008)
- 1336 Railroad Crossing: Driver's Duty (2008)
- 1337 Stop: All Vehicles at Railroad Crossing Signals (2015)
- 1337.5 Stop: Pedestrian Crossing Railroad Tracks (2015)

CONTENTS

WIS JI-CIVIL

- 1338 Stop: Nonoperation of Railroad Crossing Signals (2008)
- 1339 Stop: Special Vehicles at Railroad Crossing (2008)
- 1340 Stop: For School Bus Loading or Unloading Children (2008)
- 1350 Turn or Movement: Signal Required (2008)
- 1352 Turn: Position and Method When Not Otherwise Marked or Posted (2008)
- 1354 Turn or Movement: Ascertainment that Turn or Movement Can Be Made with Reasonable Safety: Lookout (2009)
- 1355 Deviation from Traffic Lane: Clearly Indicated Lanes (2008)

Other Negligence

- 1380 Negligence: Teacher: Duty to Instruct or Warn (2020)
- 1381 Negligence: Teacher: Duty to Supervise Students (2016)
- 1383 Employer Negligence: Negligent Hiring, Training, or Supervision (2019)
- 1384 Duty of Hospital: Granting and Renewing Staff Privileges (Corporate Negligence) (2017)
- 1385 Negligence: Hospital: Duty of Employees: Performance of Routine Custodial Care Not Requiring Expert Testimony (1999)
- 1385.5 Negligence: Hospital: Duty of Employees: Suicide or Injury Resulting from Escape or Attempted Suicide (2006)
- 1390 Injury by Dog (2017)
- 1391 Liability of Owner or Keeper of Animal: Common Law (2016)
- 1395 Duty of Public Utility: Highway Obstructions: Nonenergized Facilities (1989)
- 1397 Negligence: Voluntary Assumption of Duty to a Third Person (2014)

RAILROADS

- 1401 Railroads: Duty to Ring Engine Bell Within Municipality (2007)
- 1402 Railroads: Duty to Ring Engine Bell Outside Municipality (2007)
- 1403 Railroads: Duty to Blow Train Whistle Within Municipality [Withdrawn 2007]
- 1405 Railroads: Duty of Train Crew Approaching Crossing (2006)
- 1407 Railroads: Speed: Fixed Limits (2006)
- 1408 Railroads: Speed: No Limit (2006)
- 1409 Railroads: Negligent Speed, Causation (2006)
- 1410 Railroads: Duty to Maintain Crossing Signs (2006)
- 1411 Railroads: Duty to Maintain Open View at Crossings (2006)
- 1412 Railroads: Duty to Have Proper Headlights (2006)
- 1413 Railroads: Ultrahazardous or Unusually Dangerous Crossings: Increased Duty (2006)

WIS JI-CIVIL

TABLE OF CONTENTS

VOLUME II

NEGLIGENCE (Continued)

- 1500 Cause (2021)
- 1501 Cause: Normal Response (1998)
- 1505 Cause: Where Cause of Death is in Doubt (1998)
- 1506 Cause: Relation of a Medical Procedure to the Accident (1998)
- 1510 Negligent Infliction of Severe Emotional Distress (Bystander Claim) (2014)
- 1511 Personal Injuries: Negligent Infliction of Severe Emotional Distress
(Separate or Direct Claim) (2018)

Comparative Negligence

- 1580 Comparative Negligence: Plaintiff and One or More Defendants (2011)
- 1582 Comparative Negligence: Adult and Child (1990)
- 1585 Comparative Negligence: Plaintiff-Guest and Host-Defendant
Negligent (1992)
- 1590 Comparative Negligence: Plaintiff-Guest Passively Negligent; Host (Or
Other Driver) Negligent (2003)
- 1591 Comparative Negligence: Guest Passively Negligent; Claims Against and
Among Drivers; Apportionment from One Comparative Negligence
Question (2015)
- 1592 Comparative Negligence: Guest Passively Negligent; Claims Against and
Among Drivers; Apportionment of Comparative Negligence from Two
Questions (2003)
- 1595 Comparative Negligence: Where Negligence or Cause Question Has Been
Answered by Court (1990)

Imputed Negligence

- 1600 Servant: Driver of Automobile (Presumption from Ownership of Vehicle) (2003)
- 1605 Driver: Scope of Employment (2014)
- 1610 Joint Adventure (Enterprise): Automobile Cases (1990)

Damages

- 1700 Damages: General (2016)
- 1705 Damages: Burden of Proof in Tort Actions: Future Damages [Withdrawn 2001]
- 1707 Punitive Damages: Nonproducts Liability [For Actions Commenced Before May 17, 1995] (1996)
- 1707A Punitive Damages: Products Liability [For Actions Commenced Before May 17, 1995] (1996)
- 1707.1 Punitive Damages: Nonproducts Liability (2018)
- 1707.2 Punitive Damages: Products Liability (2008)
- 1708 Battery: Punitive Damages: Mitigation by Provocation [Withdrawn © 2010]
- 1710 Aggravation of Injury Because of Medical Negligence (2015)
- 1715 Aggravation of Pre-existing Injury (1990)
- 1720 Aggravation or Activation of Latent Disease or Condition (1992)
- 1722 Damages from Nonconcurrent or Successive Torts (1992)
- 1722A Damages from Nonconcurrent or Successive Torts (To be used where several tortfeasors are parties) (1996)
- 1723 Enhanced Injuries (2009)
- 1725 Further Injury in Subsequent Event (2003)
- 1730 Damages: Duty to Mitigate: Physical Injuries (2012)
- 1731 Damages: Duty to Mitigate: Negligence or Breach of Contract (2012)
- 1732 Damages: Duty to Mitigate: Intentional Tort (2012)
- 1735 Damages: Not Taxable as Income (1990)
- 1740 Damages: Common Scheme or Plan; Concerted Action (Wis. Stat. § 895.045(2)) (2009)
- 1741 Personal Injuries: Negligence in Informing the Patient (2015)
- 1742 Personal Injuries: Medical Care: Offsetting Benefit from Operation Against Damages for Negligence in Informing the Patient (2015)
- 1749 Personal Injuries: Conversion Table for 1998 Revision of Damage Instructions (1998)
- 1750.1 Personal Injuries: Subdivided Question as to Past and Future Damages (1998)

- 1750.2 Personal Injuries: Past and Future: One Verdict Question (Except Past Loss of Earnings and Past Medical Expenses) (1998)
- 1754 Personal Injury: One Subdivided Question as to Past Damages [Withdrawn © 1998]
- 1756 Personal Injuries: Past Health Care Expenses (2015)
- 1757 Personal Injuries: Past Health Care Expenses (Medical Negligence Cases) (Negligence of Long-Term Care Provider): Collateral Sources (2013)
- 1758 Personal Injuries: Future Health Care Expenses (2010)
- 1760 Personal Injuries: Past Loss of Earning Capacity (2016)
- 1762 Personal Injuries: Future Loss of Earning Capacity (2003)
- 1766 Personal Injuries: Past Pain, Suffering, and Disability (Disfigurement) (2009)
- 1767 Personal Injuries: Future Pain, Suffering, and Disability (Disfigurement) (1999)
- 1768 Personal Injuries: Past and Future Pain, Suffering, and Disability (Disfigurement) (1998)
- 1770 Personal Injuries: Severe Emotional Distress (2006)
- 1780 Personal Injuries: Loss of Business Profits [Withdrawn 1998]
- 1785 Personal Injuries: Past Loss of Professional Earnings [Withdrawn 1998]
- 1788 Loss of Earnings: Delay in Obtaining Degree [Withdrawn 1999]
- 1795 Personal Injury: Life Expectancy and Mortality Tables (1992)
- 1796 Damages: Present Value of Future Losses (2003)
- 1797 Damages: Effects of Inflation (1993)
- 1800 Property: Loss of Use of Repairable Automobile (1997)
- 1801 Property: Loss of Use of Nonrepairable Automobile (1997)
- 1803 Property: Destruction of Property (2010)
- 1804 Property: Damage to Repairable Property (2010)
- 1805 Property: Damage to Nonrepairable Property (2010)
- 1806 Property: Damage to a Growing Crop (1997)
- 1810 Trespass: Nominal Damages (2013)
- 1812 Quantum Meruit: Measure of Services Rendered (1992)
- 1815 Injury to Spouse: Loss of Consortium (2012)
- 1816 Injury to Spouse: Past Loss of Earning Capacity: Household Services (1993)
- 1817 Injury to Spouse: Future Loss of Earning Capacity: Household Services (2001)
- 1820 Injury to Spouse: Nursing Services: Past and Future (1992)
- 1825 Injury to Wife: Medical and Hospital Expenses [Withdrawn 1995]
- 1830 Injury to Wife: Medical and Hospital Bills: Dispute over Ownership of Claim [Withdrawn 1995]

CONTENTS

WIS JI-CIVIL

- 1835 Injury to Minor Child: Parent's Damages for Loss of Child's Earnings and Services: Past and Future (2001)
- 1837 Injury to Minor Child: Parent's Damages for Loss of Society and Companionship (2001)
- 1838 Injury to Parent: Minor Child's Damages for Loss of Society and Companionship (2001)
- 1840 Injury to Minor Child: Parents' Damages for Medical Expenses: Past and Future (1996)
- 1845 Injury to Child: Parents' Damages for Services Rendered to Child: Past and Future (1992)
- 1850 Estate's Recovery for Medical, Hospital, and Funeral Expenses (2016)
- 1855 Estate's Recovery for Pain and Suffering (2018)
- 1860 Death of Husband: Pecuniary Loss [Withdrawn 1992]
- 1861 Death of Spouse (Domestic Partner): Pecuniary Loss (2010)
- 1865 Death of Wife: Pecuniary Loss [Withdrawn 1992]
- 1870 Death of Spouse: Surviving Spouse's Loss of Society and Companionship (2019)
- 1875 Death of Spouse: Medical, Hospital, and Funeral Expenses (1992)
- 1880 Death of Parent: Pecuniary Loss (2016)
- 1885 Death of Adult Child: Pecuniary Loss (2001)
- 1890 Damages: Death of Minor Child: Premajority Pecuniary Loss (2001)
- 1892 Damages: Death of Minor Child: Postmajority Pecuniary Loss (2001)
- 1895 Death of Child: Parent's Loss of Society and Companionship (2019)
- 1897 Death of Parent: Child's Loss of Society and Companionship (2019)

Safe Place

- 1900.2 Safe-Place Statute: Duty of Employer (1992)
- 1900.4 Safe-Place Statute: Injury to Frequenter: Negligence of Employer or Owner of a Place of Employment (2021)
- 1901 Safe-Place Statute: Definition of Frequenter (1996)
- 1902 Safe-Place Statute: Negligence of Plaintiff Frequenter (2004)
- 1904 Safe-Place Statute: Public Buildings: Negligence of Owner (1990)
- 1910 Safe-Place Statute: Place of Employment: Business (1990)
- 1911 Safe-Place Statute: Control (1992)

Nuisance

- 1920 Nuisance: Law Note (2019)
- 1922 Private Nuisance: Negligent Conduct (2010)

- 1924 Private Nuisance: Abnormally Dangerous Activity: Strict Liability (2010)
- 1926 Private Nuisance: Intentional Conduct (2010)
- 1928 Public Nuisance: Negligent Conduct (2010)
- 1930 Public Nuisance: Abnormally Dangerous Activity: Strict Liability (2010)
- 1932 Public Nuisance: Intentional Conduct (2010)

INTENTIONAL TORTS

Assault and Battery

- 2000 Intentional Tort: Liability of Minor (2014)
- 2001 Intentional Versus Negligent Conduct (1995)
- 2004 Assault (2011)
- 2005 Battery (2011)
- 2005.5 Battery: Offensive Bodily Contact (2015)
- 2006 Battery: Self-Defense (2013)
- 2006.2 Battery: Self-Defense; Defendant's Dwelling, Motor Vehicle, Place of Business;
Wis. Stat. § 895.62 (2016)
- 2006.5 Battery: Defense of Property (2013)
- 2007 Battery: Liability of an Aider and Abettor (2011)
- 2008 Battery: Excessive Force in Arrest (2002)
- 2010 Assault and Battery: Offensive Bodily Contact
[Renumbered JI-Civil- 2005.5 2011]
- 2020 Sports Injury: Reckless or Intentional Misconduct (2018)

False Imprisonment

- 2100 False Imprisonment: Definition (2014)
- 2110 False Imprisonment: Compensatory Damages (2014)
- 2115 False Arrest: Law Enforcement Officer; Without Warrant (1993)

Federal Civil Rights

- 2150 Federal Civil Rights: §§ 1981 and 1982 Actions (1993)
- 2151 Federal Civil Rights: § 1983 Actions (2014)
- 2155 Federal Civil Rights: Excessive Force in Arrest (in Maintaining Jail
Security) (2014)

Conversion

- 2200 Conversion: Dispossession (2014)
- 2200.1 Conversion: Refusal to Return Upon Demand (Refusal by Bailee) (1993)
- 2200.2 Conversion: Destruction or Abuse of Property (1991)
- 2201 Conversion: Damages (2016)

Misrepresentation

- 2400 Misrepresentation: Bases for Liability and Damages - Law Note for Trial Judges (2021)
- 2401 Misrepresentation: Intentional Deceit (2018)
- 2402 Misrepresentation: Strict Responsibility (2018)
- 2403 Misrepresentation: Negligence (2018)
- 2405 Intentional Misrepresentation: Measure of Damages in Actions Involving Sale [Exchange] of Property (Benefit of the Bargain) (2018)
- 2405.5 Strict Responsibility: Measure of Damages in Actions Involving Sale [Exchange] of Property (Benefit of the Bargain) (2018)
- 2406 Negligent Misrepresentation: Measure of Damages in Actions Involving Sale [Exchange] of Property (Out of Pocket Rule) (2014)
- 2418 Unfair Trade Practice: Untrue, Deceptive, or Misleading Representation: Wis. Stat. § 100.18(1) (2021)
- 2419 Property Loss Through Fraudulent Misrepresentation: Wis. Stat. § 895.446 (Based on Conduct (Fraud) Prohibited by Wis. Stat. § 943.20) (2018)
- 2420 Civil Theft: Wis. Stat. § 895.446 (Based on Conduct (Theft) Prohibited by Wis. Stat. § 943.20(1)(a)) (2019)

Defamation

- 2500 Defamation - Law Note for Trial Judges (2016)
- 2501 Defamation: Private Individual Versus Private Individual, No Privilege (2003)
- 2505 Defamation: Truth as a Defense (Nonmedia Defendant) (2014)
- 2505A Defamation: Truth of Statement (First Amendment Cases) (1989)
- 2507 Defamation: Private Individual Versus Private Individual with Conditional Privilege (2020)
- 2509 Defamation: Private Individual Versus Media Defendant (Negligent Standard) (2003)
- 2510 Defamation: Truth as Defense Where Plaintiff Charged with Commission of a Crime [Withdrawn 1993]

- 2511 Defamation: Public Figure Versus Media Defendant or Private Figure with Constitutional Privilege (Actual Malice) (2003)
- 2512 Defamation: Truth as Defense Where Plaintiff Not Charged with Commission of a Crime [Withdrawn 1993]
- 2513 Defamation: Express Malice (1993)
- 2514 Defamation: Effect of Defamatory Statement or Publication [Withdrawn 1993]
- 2516 Defamation: Compensatory Damages (1991)
- 2517 Defamation: Conditional Privilege: Abuse of Privilege [Renumbered JI-Civil 2507 1993]
- 2517.5 Defamation: Public Official: Abuse of Privilege [Renumbered JI-Civil 2511 1993]
- 2518 Defamation: Express Malice [Renumbered JI-Civil 2513 1993]
- 2520 Defamation: Punitive Damages (2003)
- 2550 Invasion of Privacy (Publication of a Private Matter) Wis. Stat. § 995.50(2)(c) (2015)
- 2551 Invasion of Privacy: Highly Offensive Intrusion; Wis. Stat. § 995.50(2)(a) (2011)
- 2552 Invasion of Privacy: Publication of a Private Matter: Conditional Privilege (2003)

Misuse of Procedure

- 2600 Malicious Prosecution: Instituting a Criminal Proceeding (2015)
- 2605 Malicious Prosecution: Instituting a Civil Proceeding (2015)
- 2610 Malicious Prosecution: Advice of Counsel: Affirmative Defense (Criminal Proceeding) (2015)
- 2611 Malicious Prosecution: Advice of Counsel: Affirmative Defense (Civil Proceeding) (2015)
- 2620 Abuse of Process (2013)

Trade Practices

- 2720 Home Improvement Practices Act Violation; Wisconsin Administrative Code Chapter ATCP 110; Wis. Stat. § 100.20 (2013)
- 2722 Theft by Contractor (Wis. Stat. § 779.02(5)) (2015)

Domestic Relations

- 2725 Intentional Infliction of Emotional Distress (2020)

Business Relations

- 2750 Employment Relations: Wrongful Discharge - Public Policy (2020)
2760 Bad Faith by Insurance Company (Excess Verdict Case) (2003)
2761 Bad Faith by Insurance Company: Assured's Claim (2012)
2762 Bad Faith by Insurance Company: Third Party Employee Claim Against
Worker's Compensation Carrier [Withdrawn] (2009)
2769 Wisconsin Fair Dealership Law: Existence of Dealership (2020)
2770 Wisconsin Fair Dealership Law: Good Cause for Termination, Cancellation,
Nonrenewal, Failure to Renew, or Substantial Change in Competitive
Circumstances (Wis. Stat. § 135.03) (2005)
2771 Wisconsin Fair Dealership Law: Adequate Notice by Grantor
(Wis. Stat. § 135.04) (2005)
2772 Wisconsin Fair Dealership Law: Special Verdict (2005)
2780 Intentional Interference with Contractual Relationship (2020)
2790 Trade Name Infringement (2020)
2791 Trade Name Infringement: Damages (2010)

Civil Conspiracy

- 2800 Conspiracy: Defined (2018)
2802 Conspiracy: Proof of Membership (2003)
2804 Conspiracy: Indirect Proof (2003)
2806 Conspiracy to be Viewed as a Whole (1993)
2808 Conspiracy between Affiliated Corporations (2009)
2810 Conspiracy: Overt Acts (2003)
2820 Injury to Business: (Wis. Stat. § 134.01) (2008)
2822 Restraint of Will (Wis. Stat. § 134.01) (2003)

Tort Immunity

- 2900 Tort Immunity: Immunities Abrogated - Law Note for Trial Judges (1993)

CONTRACTS**General**

- 3010 Agreement (2011)
- 3012 Offer: Making (1993)
- 3014 Offer: Acceptance (1993)
- 3016 Offer: Rejection (1993)
- 3018 Offer: Revocation (1993)
- 3020 Consideration (1993)
- 3022 Definiteness and Certainty (1993)
- 3024 Implied Contract: General (1993)
- 3026 Implied Contract: Promise to Pay Reasonable Value (1993)
- 3028 Contracts Implied in Law (Unjust Enrichment) (2020)
- 3030 Modification by Mutual Assent (1993)
- 3032 Modification by Conduct (1993)
- 3034 Novation (1993)
- 3040 Integration of Several Writings (1993)
- 3042 Partial Integration: Contract Partly Written, Partly Oral (1993)
- 3044 Implied Duty of Good Faith (Performance of Contract) (2007)
- 3045 Definitions - "Bona Fide" (1993)
- 3046 Implied Promise of No Hindrance (1993)
- 3048 Time as an Element (2016)
- 3049 Duration (2016)
- 3050 Contracts: Subsequent Construction by Parties (1993)
- 3051 Contracts: Ambiguous Language (2012)
- 3052 Substantial Performance (1994)
- 3053 Breach of Contract (2007)
- 3054 Demand for Performance (2014)
- 3056 Sale of Goods: Delivery or Tender of Performance (1993)
- 3057 Waiver (2018)
- 3058 Waiver of Strict Performance (1993)
- 3060 Hindrance or Interference with Performance (1993)
- 3061 Impossibility: Original (1993)
- 3062 Impossibility: Supervening (1993)
- 3063 Impossibility: Partial (1993)
- 3064 Impossibility: Temporary (1993)
- 3065 Impossibility: Superior Authority (1993)
- 3066 Impossibility: Act of God (1993)

CONTENTS

WIS JI-CIVIL

- 3067 Impossibility: Disability or Death of a Party (1993)
- 3068 Voidable Contracts: Duress, Fraud, Misrepresentation (2016)
- 3070 Frustration of Purpose (2020)
- 3072 Avoidance for Mutual Mistake of Fact (2014)
- 3074 Estoppel: Law Note for Trial Judges (2018)
- 3076 Contracts: Rescission for Nonperformance (2001)
- 3078 Abandonment: Mutual (1993)
- 3082 Termination of Servant's Employment: Indefinite Duration (1993)
- 3083 Termination of Servant's Employment: Employer's Dissatisfaction (1993)
- 3084 Termination of Servant's Employment: Additional Consideration
Provided by Employee (1993)

Real Estate

- 3086 Real Estate Listing Contract: Validity: Performance (2019)
- 3088 Real Estate Listing Contract: Termination for Cause (1993)
- 3090 Real Estate Listing Contract: Broker's Commission on Sale Subsequent
to Expiration of Contract Containing "Extension" Clause (1993)
- 3094 Residential Eviction: Possession of Premises (2020)
- 3095 Landlord - Tenant: Constructive Eviction (2013)

WIS JI-CIVIL

TABLE OF CONTENTS

VOLUME III

CONTRACTS (Continued)

Insurance

- 3100 Insurance Contract: Misrepresentation or Breach of Affirmative
Warranty by the Insured (1998)
- 3105 Insurance Contract: Failure of Condition or Breach of Promissory
Warranty (1994)
- 3110 Insurance Contract: Definition of "Resident" or "Member of a Household" (2013)
- 3112 Owner's Permission for Use of Automobile (1993)
- 3115 Failure of Insured to Cooperate (2016)
- 3116 Failure to Cooperate: Materiality (2016)
- 3117 Failure to Give Notice to Insurer (1994)
- 3118 Failure to Give Notice to Insurer: Materiality (2002)

Breach of Warranty

- 3200 Products Liability: Law Note (2021)
- 3201 Implied Warranty: Merchantability Defined (2009)
- 3202 Implied Warranty: Fitness for Particular Purpose (1994)
- 3203 Implied Warranty: By Reason of Course of Dealing or Usage of Trade (1994)
- 3204 Implied Warranty: Sale of Food (1994)
- 3205 Implied Warranty: Exclusion or Modification (2009)
- 3206 Implied Warranty: Exclusion by Reason of Course of Dealing or
Usage of Trade (1994)
- 3207 Implied Warranty: Use of Product after the Defect Known (2009)
- 3208 Implied Warranty: Failure to Examine Product (2009)
- 3209 Implied Warranty: Susceptibility or Allergy of User (2009)
- 3210 Implied Warranty: Improper Use (1994)
- 3211 Implied Warranty: Notice of Breach (1993)

- 3220 Express Warranty: General (1994)
- 3222 Express Warranty: No Duty of Inspection (1994)
- 3225 Express Warranty: Statement of Opinion (1994)
- 3230 Express Warranty under the Uniform Commercial Code (1994)

Duties of Manufacturers and Sellers

- 3240 Negligence: Duty of Manufacturer (2007)
- 3242 Negligence: Duty of Manufacturer (Supplier) to Warn (2020)
- 3244 Negligence: Duty of Manufacturer (Seller) to Give Adequate
Instructions as to Use of a Complicated Machine (Product) (1994)
- 3246 Negligence: Duty of Manufacturer (Seller) Who Undertakes to Give
Instruction as to the Use of a Machine (Product) (1994)
- 3248 Negligence: Duty of Restaurant Operator in Sale of Food Containing
Harmful Natural Ingredients (1994)
- 3250 Negligence: Duty of Seller: Installing (Servicing) Product (1994)
- 3254 Duty of Buyer or Consumer: Contributory Negligence (2015)
- 3260 Strict Liability: Duty of Manufacturer to Ultimate User (For Actions Commenced
Before February 1, 2011) (2014)
- 3260.1 Product Liability: Wis. Stat. § 895.047 (For Actions Commenced after January 31,
2011) (2014)
- 3262 Strict Liability: Duty of Manufacturer (Supplier) to Warn
(For Actions Commenced Before February 1, 2011) (2014)
- 3264 Strict Liability: Definition of Business (1994)
- 3268 Strict Liability: Contributory Negligence (2015)
- 3290 Strict Products Liability: Special Verdict (For Actions Commenced Before
February 1, 2011) (2014)
- 3290.1 Product Liability: Wis. Stat. § 895.047: Verdict (For Actions Commenced after
January 31, 2011) (2014)
- 3294 Risk Contribution: Negligence: Verdict (For Actions Commenced Before
February 1, 2011) (2014)
- 3295 Risk Contribution: Negligence Claim (For Actions Commenced Before February
1, 2011) (2014)
- 3296 Risk Contribution: Negligence: Verdict (Wis. Stat. § 895.046) (For Actions
Commenced after January 31, 2011) (2014)

Lemon Law

- 3300 Lemon Law Claim: Special Verdict (2016)
- 3301 Lemon Law Claim: Nonconformity (2001)
- 3302 Lemon Law Claim: Four Attempts to Repair: Same Nonconformity (1999)
- 3303 Lemon Law Claim: Out of Service Warranty Nonconformity
(Warranty on or after March 1, 2014) (2016)
- 3304 Lemon Law Claim: Failure to Repair (Relating to Special Verdict
Question 6) (2006)
- 3310 Magnuson–Moss Claim (2020)

Damages

- 3700 Damages: Building Contracts: Measure of Damages (2012)
- 3710 Consequential Damages for Breach of Contract (2018)
- 3720 Damages: Incidental (1994)
- 3725 Damages: Future Profits (2008)
- 3735 Damages: Loss of Expectation (1994)
- 3740 Damages: Termination of Real Estate Listing Contract (Exclusive) by
Seller; Broker's Recovery (1994)
- 3750 Damages: Breach of Contract by Purchaser (1994)
- 3755 Damages: Breach of Contract by Seller (1994)
- 3760 Damages: Attorney Fees (1994)

AGENCY; EMPLOYMENT; BUSINESS ORGANIZATION

- 4000 Agency: Definition (2019)
- 4001 General Agent: Definition (1994)
- 4002 Special Agent: Definition (1994)
- 4005 Agency: Apparent Authority (1994)
- 4010 Agency: Implied Authority (1994)
- 4015 Agency: Ratification (1994)
- 4020 Agent's Duties Owed to Principal (1994)
- 4025 Agency: Without Compensation (2005)
- 4027 Agency: Termination: General (1994)
- 4028 Agency: Termination: Notice to Third Parties (1994)
- 4030 Servant: Definition (2015)
- 4035 Servant: Scope of Employment (2020)

CONTENTS

WIS JI-CIVIL

- 4040 Servant: Scope of Employment; Going to and from Place of Employment (2014)
- 4045 Servant: Scope of Employment While Traveling (2020)
- 4050 Servant: Master's Ratification of Wrongful Acts Done Outside Scope of Employment (1994)
- 4055 Servant: Vicarious Liability of Employer (2005)
- 4060 Independent Contractor: Definition (2005)
- 4080 Partnership (2009)

PERSONS

- 5001 Paternity: Child of Unmarried Woman (2021)
- 7030 Child in Need of Protection or Services (2014)
- 7039 Involuntary Termination of Parental Rights: Child in Need of Protection or Services: Preliminary Instruction (2014)
- 7040 Involuntary Termination of Parental Rights: Continuing Need of Protection or Services (2014)
- 7042 Involuntary Termination of Parental Rights: Abandonment under Wis. Stat. § 48.415(1)(a) 2 or 3 (2014)
- 7050 Involuntary Commitment: Mentally Ill (2020)
- 7054 Petition for Guardianship of the Person: Incompetency; Wis. Stat. § 54.10(3)(a)2 (2019)
- 7055 Petition for Guardianship of the Estate: Incompetency; Wis. Stat. § 54.10(3)(a)3 (2009)
- 7056 Petition for Guardianship of the Estate: Spendthrift; Wis. Stat. § 54.10(2) (2009)
- 7060 Petition for Guardianship of Incompetent Person and Application for Protective Placement; Wis. Stat. § 54.10 and 55.08(1) (2019)
- 7061 Petition for Guardianship of Incompetent Person and Application for Protective Services; Wis. Stat. § 54.10 and 55.08(2) (2014)
- 7070 Involuntary Commitment: Habitual Lack of Self-Control as to the Use of Alcohol Beverages (2003)

PROPERTY

General

- 8012 Trespasser: Definition (2013)

- 8015 Consent of Possessor to Another's Being on Premises (2013)
- 8017 Duty of Hotelkeeper to Furnish Reasonably Safe Premises and Furniture
for Guests (Renumbered JI-Civil 8051) (1994)
- 8020 Duty of Owner or Possessor of Real Property to Nontrespasser User (2020)
- 8025 Trespass: Owner's Duty to Trespasser; Duty to Child Trespasser
(Attractive Nuisance) (2016)
- 8026 Trespass: Special Verdict (2016)
- 8027 Trespass: Child Trespasser (Attractive Nuisance): Special Verdict (2013)
- 8030 Duty of Owner of a Building Abutting on a Public Highway (2006)
- 8035 Highway or Sidewalk Defect or Insufficiency (2021)
- 8040 Duty of Owner of Place of Amusement: Common Law (1994)
- 8045 Duty of a Proprietor of a Place of Business to Protect a Patron from
Injury Caused by Act of Third Person (2012)
- 8050 Duty of Hotel Innkeeper: Providing Security (1994)
- 8051 Duty of Hotelkeeper to Furnish Reasonably Safe Premises and Furniture
for Guests (2020)
- 8060 Adverse Possession Not Founded on Written Instrument (Wis. Stat.
§ 893.25) (2018)

Eminent Domain

- 8100 Eminent Domain: Fair Market Value (Total Taking) (2020)
- 8101 Eminent Domain: Fair Market Value (Partial Taking) (2012)
- 8102 Eminent Domain: Severance Damages (2008)
- 8103 Eminent Domain: Severance Damages: Cost-To-Cure (2007)
- 8104 Eminent Domain: Unity of Use - Two or More Parcels (2007)
- 8105 Eminent Domain: Lands Containing Marketable Materials (2008)
- 8107 Eminent Domain: Severance Damages; Unity of Use (2008)
- 8110 Eminent Domain: Change in Grade (2008)
- 8111 Eminent Domain: Access Rights (2020)
- 8112 Eminent Domain: Air Rights (2007)
- 8115 Eminent Domain: Special Benefits (2008)
- 8120 Eminent Domain: Comparable Sales Approach (2008)
- 8125 Eminent Domain: Inconvenience to Landowner [Withdrawn 2008]
- 8130 Eminent Domain: Income Approach (2008)
- 8135 Eminent Domain: Cost Approach (2008)
- 8140 Eminent Domain: Legal Nonconforming Use, Lot or
Structure (Definitions) (2007)

CONTENTS

WIS JI-CIVIL

8145 Eminent Domain: Assemblage (2007)

Table of Cases Cited (2021)

Index (2021)

358 SUBSEQUENT REMEDIAL MEASURES

Evidence has been presented that, after the (accident) (event) (injury) which is the subject of this action, the defendant (describe effort to warn, instruct, or correct after the event). Evidence of these subsequent measures cannot be considered by you to prove that the defendant was negligent or culpable in connection with the (accident) (event) (injury). However, you may consider the actions taken after the (accident) (event) (injury) as proof of (ownership) (control) (feasibility of precautionary measures¹) (or credibility of any witnesses)².

COMMENT

This instruction and comment was approved by the Committee in 2021.

This instruction should be given when the feasibility of specified design changes is submitted to the jury, or one of the other issues as to which evidence of subsequent remedial measures is admissible is submitted to the jury.

This instruction is based on Wis. Stat. § 904.07, which provides:

“When, after an event, measures are taken which, if taken previously, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event. This section does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment or proving a violation of s. 101.11.”

Wis. Stat. § 904.07 is substantially the same as Federal Rule of Evidence 407, which codifies, to a considerable extent, the common law rule which holds that evidence of subsequent remedial measures is not admissible to prove fault or negligence.

Evidence of post-event remedial measures may be introduced under both negligence and strict liability theories. D. L. v. Huebner, 110 Wis. 2d 581, 329 N.W.2d 890 (1983).

The underlying rationale for excluding subsequent remedial measures is generally twofold. First, evidence of subsequent repairs is not relevant to the issue of negligence or culpability because they do not necessarily imply that the actor acknowledges prior negligence. Second, the rule is grounded in social

policy concerns that allowing admission of subsequent remedial measures might discourage repairs or alterations that would enhance safety after an accident. D.L., *supra* at 605 - 606.

There are four distinct exceptions noted in the rule which would allow evidence of subsequent remedial measures to be admitted into evidence: (1) impeachment, (2) ownership, (3) control, and (4) feasibility or precautionary measures. Even if evidence qualifies under Wis. Stat. § 904.07, evidence of subsequent remedial measures must still satisfy the standards of Wis. Stat. §§ 904.01, 904.02, and 904.03.

1. In Chart v. General Motors Corp., 80 Wis.2d 91, 258 N.W.2d 680 (1977), the Wisconsin Supreme Court held that a design change to subsequent products was admissible under § 904.07. The issue arose out of a personal injury action in which the plaintiff alleged the defective design of the automobile she was riding in resulted in her injury. At trial, the circuit court admitted evidence relating to design changes the manufacturer made to subsequent models of the automobile in question. In addressing this issue, the Wisconsin Supreme Court adopted the holding in Ault v. International Harvester Co., 13 Cal.3d 113, 117 Cal.Rptr. 812, 528 P.2d 1148, 1151 (1974), and held that “if the (design) changes occur closely in time they may well illustrate the feasibility of the improvement at the time of the accident, one of the normal elements in the negligence calculus.” Chart, *supra* at 100. The court in Chart went on to provide that in the area of products liability, the emphasis shifts from the manufacturer's conduct to the character of the product.

However, ignoring the distinction between that of the manufacturer's conduct and that of the character of the product may render a subsequent warning inadmissible. For example, in Krueger v. Tappan Co. 104 Wis. 2d 199, 311 N.W.2d 219 (Ct. App. 1981) the plaintiff brought a products liability action against the manufacturer of a gas range after suffering injuries when gasoline used to clean a floor was ignited by the range's pilot light. The court in Krueger held that the trial court did not err when it ruled that the warning in owner's manuals published nine years after the manufacture of the range in question was inadmissible.

This shift in emphasis from the manufacturer's conduct to the character of the product is true for strict liability based on product design but not for strict liability based on failure to warn. The duty to warn involves foreseeability, and failure to warn involves culpability. Strict liability in tort, as established by § 402A of the Restatement, Second, Torts (1965), has nothing to do with culpability. Strict liability for the sale of a defective product may arise even though the seller “has exercised all possible care.” Krueger, *supra* at 207.

Therefore, whether a manufacturer had or should have had knowledge of a dangerous use prior to the plaintiff's injury necessarily shifts the focus back to the seller's conduct in a strict liability case based on a claimed failure to warn, which in turn, is grounds for holding evidence of a subsequent warning inadmissible.

2. Evidence of subsequent remedial measures may be admissible to impeach the credibility of a witness. For example, in D.L. v. Huebner, 110 Wis.2d 581, 607, 329 N.W.2d 890 (1983) the Wisconsin Supreme Court held that in the personal injury suit brought on behalf of an injured minor against the manufacturer of chopper wagon, the trial court did not err in admitting evidence of improvement in safety features of chopper wagons manufactured subsequent to the date of manufacture of the wagon involved in the case, as this was for impeachment purposes. The court in D.L. also held that “the circuit court could have given a limiting instruction as to use of evidence, sec. 901.06, or could have, in its discretion, excluded the evidence if its probative value was substantially outweighed by other considerations.” Id., at 614.

1023 MEDICAL NEGLIGENCE

In (treating) (diagnosing) (plaintiff)'s (injuries) (condition), (doctor) was required to use the degree of care, skill, and judgment which reasonable (doctors who are in general practice) (specialists who practice the specialty which (doctor) practices) would exercise in the same or similar circumstances, having due regard for the state of medical science at the time (plaintiff) was (treated) (diagnosed). A doctor who fails to conform to this standard is negligent. The burden is on (plaintiff) to prove that (doctor) was negligent.

A doctor is not negligent, however, for failing to use the highest degree of care, skill and judgment or solely because a bad result may have followed (his) (her) (care and treatment) (surgical procedure) (diagnosis). The standard you must apply in determining if (doctor) was negligent is whether (doctor) failed to use the degree of care, skill, and judgment which reasonable (general practitioners) (specialists) would exercise given the state of medical knowledge at the time of the (treatment) (diagnosis) in issue.

[Use this paragraph only if there is evidence of two or more alternative methods of treatment or diagnosis recognized as reasonable: If you find from the evidence that more than one method of (treatment for) (diagnosing) (plaintiff)'s (injuries) (condition) was recognized as reasonable given the state of medical knowledge at that time, then (doctor) was at liberty to select any of the recognized methods. (Doctor) was not negligent because (he) (she) chose to use one of these recognized (treatment) (diagnostic) methods rather than another recognized method if (he) (she) used reasonable care, skill, and judgment in administering the method.]

You have heard testimony during this trial from doctors who have testified as expert witnesses. The reason for this is because the degree of care, skill, and judgment which a reasonable doctor would exercise is not a matter within the common knowledge of laypersons. This standard is within the special knowledge of experts in the field of medicine and can only be established by the testimony of experts. You, therefore, may not speculate or guess what the standard of care, skill and judgment is in deciding this case but rather must attempt to determine it from the expert testimony that you heard during this trial. In determining the weight to be given an opinion, you should consider the qualifications and credibility of the expert and whether reasons for the opinion are based on facts in the case. You are not bound by any expert's opinion.

(Insert the appropriate cause instruction. To avoid duplication, JI-1500 should not be given if the following two bracketed paragraphs are used.)

[The cause question asks whether there was a causal connection between negligence on the part of (doctor) and (plaintiff)'s (injury) (condition). A person's negligence is a cause of a plaintiff's (injury) (condition) if the negligence was a substantial factor in producing the present condition of the plaintiff's health. This question does not ask about "the cause" but rather "a cause." The reason for this is that there can be more than one cause of (an injury) (a condition). The negligence of one (or more) person(s) can cause (an injury) (a condition) or (an injury) (a condition) can be the result of the natural progression of (the injury) (the condition). In addition, the (injury) (condition) can be caused jointly by a person's negligence and also the natural progression of the (injury) (condition).]

[If you conclude from the evidence that the present condition of (plaintiff)'s health was caused jointly by (doctor)'s negligence and also the natural progression of (plaintiff)'s

(injury) (condition), then you should find that the (doctor)'s negligence was a cause of the (plaintiff)'s present condition of health.]

[The evidence indicates without dispute that when (plaintiff) retained the services of (doctor) and placed (himself) (herself) under (doctor)'s care, (plaintiff) was suffering from some (disability resulting from injuries sustained in an accident) (illness or disease). (Plaintiff)'s then physical condition cannot be regarded by you in any way as having been caused or contributed to by any negligence on the part of (doctor). This question asks you to determine whether the condition of (plaintiff)'s health, as it was when (plaintiff) placed (himself) (herself) under the doctor's care, has been aggravated or further impaired as a natural result of the negligence of (doctor)'s (treatment) (diagnosis).]

(Insert appropriate damage instructions.)

[(Plaintiff) sustained injuries before the (treatment) (diagnosis) by (doctor). Such injuries have caused (and could in the future cause) (plaintiff) to endure pain and suffering and incur some disability. In answering these questions on damages, you will entirely exclude from your consideration all damages which resulted from the original injury; you will consider only the damages (plaintiff) sustained as a result of the (treatment) (diagnosis) of by (doctor).]

[It will, therefore, be necessary for you to distinguish and separate, first, the natural results in damages that flow from (plaintiff)'s original (illness) (injuries) and, second, those that flow from (doctor)'s (treatment) (diagnosis) and allow (plaintiff) only the damages that naturally resulted from the (treatment) (diagnosis) by (doctor).]

COMMENT

This instruction was approved by the Committee in 1963. It was revised in 1966, 1974, 1984, 1987, 1988, 1989, 1990, 1991, 1992, 1995, 1996, 1998, 2002, 2009, 2011, and 2012. The comment was updated in 1990, 1992, 1996, 2001, 2002, 2003, 2004, 2005, 2006, 2009, 2011, 2012, 2016, 2017, 2019, and 2021. The 2009 revision added “(diagnosis)” throughout the instruction to the alleged negligence.

The Committee recommends that the basic inquiry with respect to the defendant's conduct be framed in simple terms of negligence. Failure on the part of the doctor to conform to the applicable standard of care constitutes negligence. This form of submission is preferable to the form previously employed, *i.e.*, stating the duty in the question. The statement of the duty is the function of the instruction. The Committee recommends that the general negligence instruction, JI-Civil 1005, not be used in addition to this instruction.

There are a series of concepts involved in the instruction. The duty of the doctor in his or her care, treatment, and procedures; the effects of bad results on liability; the degree of care, skill, and judgment required to satisfy his or her duty; the duty allows a choice of accepted alternative methods of treatment; the doctor's liability cannot be predicated on other than expert testimony (except in a *res ipsa* case); and the issue is not on the judgment the doctor made but on the degree and skill he or she exercised in arriving at the judgment. The Committee concluded that foreseeability of injury or harm is inherent in the standard expressed in the first paragraph, and if an issue in the case, it must be addressed by expert testimony.

If the trial judge prefers, this instruction can be divided into its components (*i.e.*, negligence, cause, alternative care, damages, etc.) when instructing the jury and when providing the jury with written instructions during its deliberations.

Standard of Care. This instruction reflects the changes recommended by the Wisconsin Supreme Court in Nowatske v. Osterloh, 198 Wis.2d 419, 543 N.W.2d 25 (1996). The former version of this instruction was based on prevailing case law which measured ordinary care based on what an “average” physician would have done. The court in Nowatske said “the standard of care applicable to physicians in Wisconsin can not be conclusively established either by a reflection of what the majority of practitioners do or by a sum of the customs which those practitioners follow.” Instead, the court said “it must be established by a determination of what it is reasonable to expect of a professional given the state of medical knowledge at the time of the treatment.” Nowatske, supra, at 438-39. See also the comment to Wis JI-Civil 1005.

Standard of Care: Unlicensed First-Year Resident. The Wisconsin Supreme Court in Phelps v. Physicians Ins. Co., 2005 WI 85, 282 Wis.2d 69, 698 N.W.2d 643, has held that unlicensed first-year residents should be held to:

the standard of care applicable to an unlicensed first-year resident . . . Although we anticipate this new standard of care to be lower than that of an average licensed physician in some cases, we do not expect that it will become a grant of immunity. After all, unlicensed first-year residents are graduates of a medical school who provide sophisticated health care services appropriate to their “in training” status. Therefore, unlicensed residents could still be found negligent if, for example, they undertook to treat outside the scope of their authority and expertise, or they failed to consult with someone more skilled and experienced when the standard of care required it.

The court characterized the status of an unlicensed first-year resident as “unique.” It said the resident’s authority was limited:

Although [resident] could refer to himself as an “M.D.,” his freedom of action was more restricted than that of a licensed physician. Indeed, the circuit court found that Dr. Lindemann “had no authority or privileges to provide primary obstetrical care,” and “was not supposed to act as the primary attending physician.” Rather, “[h]is primary duty was to assess and report findings and differential diagnoses to an upper level senior resident or to the attending obstetrician.”

Effect of Bad Results. The second paragraph states the rule as to the effects of bad results on the doctor's liability. Bad results raise no presumption of negligence. DeBruine v. Voskuil, 168 Wis. 104, 169 N.W. 288 (1918); Ewing v. Goode, 78 F. 442 (S.D. Ohio 1897); Wurdemann v. Barnes, 92 Wis. 206, 66 N.W. 111 (1896); Francois v. Mokrohisky, *supra*; Finke v. Hess, 170 Wis. 149, 174 N.W. 466 (1920); Hoven v. Kelble, 79 Wis.2d 444, 256 N.W.2d 379 (1976). See also Nowatske v. Osterloh, *supra*.

The judgment of a doctor in his or her care, treatment, and procedures, whether good, bad, honest or mistaken, is not at issue on his or her liability. The issue raised is whether in making the judgment, he or she exercised that degree of care and skill imposed on him or her. If he or she failed to meet that standard, he or she was negligent and liable. Christianson v. Downs, *supra*; Hoven v. Kelble, *supra*; Carson v. Beloit, 32 Wis.2d 282, 145 N.W.2d 112 (1966); Wurdemann v. Barnes, *supra*; Jaeger v. Stratton, 170 Wis. 579, 176 N.W. 61 (1920).

“Not omniscience, but due care, diligence, judgment, and skill are required of physicians. When they meet such test, they are not liable for results or errors in judgment.” Jaeger v. Stratton, *supra*.

“The question . . . is not whether a physician has made a mistake; rather, the question is whether he was negligent.” Francois v. Mokrohisky, *supra*.

“The law . . . recognizes the medical profession for what it is: a class of fallible men, some of whom are unusually well qualified and expert, and some of whom are not. The standard to which they must conform is determined by the practices of neither the very best nor the worst of the class.” Francois v. Mokrohisky, *supra*.

In 1988, the court in Schuster v. Altenberg, *supra*, reaffirmed the concept that liability will not be imposed under this negligence standard for mere errors in judgment. It quoted from its earlier holdings:

The law governing this case is well settled. A doctor is not an insurer or guarantor of the correctness of his diagnosis; the requirement is that he use proper care and skill. Knief v. Sargent, 40 Wis.2d 4, 8, 161 N.W.2d 232 (1968). The question is not whether the physician made a mistake in diagnosis, but rather whether he failed to conform to the accepted standard of care. Francois v. Mokrohisky, 67 Wis.2d 196, 201, 226 N.W.2d 470 (1975). Christianson v. Downs, 90 Wis.2d 332, 338, 279 N.W.2d 918 (1979).

The second paragraph also deals with the extent and quality of the doctor's treatment required to satisfy his or her duty. A doctor is not required to exercise the highest degree of care, skill, and judgment. Hrubes v. Faber, 163 Wis. 89, 157 N.W. 519 (1916); DeBruine v. Voskuil, *supra*; Jaeger v. Stratton, *supra*; Trogun v. Fruchtman, *supra*; Christianson v. Downs, *supra*; Carson v. Beloit, *supra*; Francois v. Mokrohisky, *supra*; Hoven v. Kelble, *supra*.

Alternative Methods. It is appropriate to instruct the jury using the bracketed language at the bottom of page one when there is evidence that more than one method of treatment or diagnosis is recognized as reasonable. See Nowatske v. Osterloh, *supra*, at 448. This is true even if an alternative method is not actually employed, as long as the treatment utilized is not the equivalent of “doing nothing.” See Barney v. Mickelson, 2020 WI 40, ¶31, 391 Wis.2d 212, 942 N.W.2d 891. (In Barney, there was substantial testimony that the continued use of an external monitor was a reasonable method to continue to assess the patient’s heart rate and was within the standard of care, even if accepted alternatives were available and could have been utilized). It is inappropriate, however, to give this instruction where the alleged negligence “lies in failing to do something, not in negligently choosing between courses of actions.” Miller v. Kim, 191 Wis. 2d 187, 198, 528 N.W.2d 72 (1995). (The circuit court in Miller committed prejudicial error when it gave the alternative methods instruction because experts unanimously testified that a spinal tap is the only reasonable method of diagnosis for a young child with symptoms of spinal meningitis). The reasonable pursuit of an accepted alternative method does not establish a doctor's liability, even if experts disagree on the method used. A physician is required by statute to inform a patient about the availability of all alternate, viable medical treatments and the benefits and risks of these treatments, Wis. Stat. § 448.30. For claims based on a failure by a physician to adequately inform a patient, see Wis JI-Civil 1023.2 Malpractice: Informed Consent.

Unnecessary and improper treatment constitutes medical malpractice. Northwest Gen. Hosp. v. Yee, 115 Wis.2d 59, 61-62, 339 N.W.2d 583 (1983).

Expert Testimony. Expert testimony is needed to support a finding of negligence on the part of the doctor. Kuehnemann v. Boyd, 193 Wis. 588, 214 N.W. 326 (1927); Holton v. Burton, *supra*; Lindloff v. Ross, 208 Wis. 482, 243 N.W. 403 (1932); Ahola v. Sincock, 6 Wis.2d 332, 94 N.W.2d 566 (1959); Froh v. Milwaukee Medical Clinic, S.C., 85 Wis.2d 308, 270 N.W.2d 83 (Ct. App. 1978); McManus v. Donlin, 23 Wis.2d 289, 127 N.W.2d 22 (1964); Treptau v. Behrens Spa, Inc., *supra*.

The degree of care and skill (of a physician) can only be proved by the testimony of experts. Without such testimony, the jury has no standard which enables it to determine whether the defendant failed to exercise the degree of care and skill required of him or her. Kuehnemann v. Boyd, *supra*; Holton v. Burton, *supra*; Lindloff v. Ross, *supra*. In 2011, the Committee added language which instructs the jury that in determining the weight of an expert's testimony, it should consider the qualifications and credibility of the expert and whether the reasons for the opinion are based on facts in the case. The jury is further instructed that it is not bound by any expert's opinion. See Weborg v. Jenny, 2012 WI 67 (Paragraph 73), 341 Wis.2d 668, 816 N.W.2d 191.

For a discussion of the admissibility of expert evidence in a medical negligence case, see Seifert v. Balink, 2017 WI 2, 372 Wis.2d 525, 888 N.W.2d 816.

The general instruction on expert testimony, Wis JI-Civil 260, should be used for issues in the trial other than standard of care.

Causation. The court in Young v. Professionals Ins. Co., 154 Wis.2d 742, 454 N.W.2d 24 (Ct. App. 1990), was critical of an earlier version of JI-1023 relating to cause. The present instruction concerning situations when there is evidence of both negligence and a condition of health resulting from the natural progression of a disease (injury) correctly states that a doctor's negligence may be causal, notwithstanding, that the plaintiff's present condition of health may in part be the result of the natural progression of plaintiff's disease (injury). This is because Wisconsin has long adopted the “substantial factor test” in deciding causation questions and no longer requires that the negligence be the sole or

proximate cause. Matuschka v. Murphy, 173 Wis. 484, 180 N.W. 821 (1921), has been overruled because it is "likely to misstate the law of causation." See Young, *supra* at 749.

This instruction comports with the supreme court's decision in Fischer v. Ganju, 168 Wis.2d 834, 485 N.W.2d 10 (1992). In Fischer, the supreme court stated that a paragraph from a prior version JI-1023 (1989) was "less than completely accurate." The version given by the trial judge in Fischer in January 1990 was based on the 1989 version of this instruction which was published in April of 1989. This version was revised by the committee following the decision in Young v. Professionals Ins. Co., *supra*. The revised JI-1023 was published in May of 1991 as part of the 1991 supplement. This revision (1991) changed the language of the prior version dealing with causation. It has not been revised since the 1991 supplement. The Committee has closely compared this present version of JI-1023 to the court's criticism of the 1989 version of the instruction. The Committee concludes that the causation language of the present instruction is consistent with the discussion of causation in the Fischer decision and accurately states the law of causation in medical malpractice pre-existing condition cases.

Specialists. See Johnson v. Agoncillo, 183 Wis.2d 143, 515 N.W.2d 508 (Ct. App. 1994), where the First District Court of Appeals held that under current Wisconsin law, a doctor who practices one medical specialty is not held to the standard of care of another medical specialty, even when treating a patient in that latter specialty. Dr. Agoncillo was a family practitioner treating a high-risk obstetrical patient. Plaintiff Johnson requested an instruction that would hold Agoncillo to the standard of the "average physician who treats high risk obstetrical patients. . . ." The trial judge refused to give such an instruction and the court of appeals affirmed, stating:

Thus, that Dr. Agoncillo chose to care for and treat Ms. Johnson during her high-risk pregnancy did not transform his class of physician to that of those who treat high-risk obstetrical patients; he was and he remained a general family practitioner who treated obstetrical patients and, as instructed by the trial court, he was thus 'required to use the degree of care, skill, and judgment which is usually exercised in the same or similar circumstances' by the average physician in that class.

The court went on to say, however, that the physician who attempts to treat a patient outside her or his expertise is not, thereby, immunized from liability. Referring to a cardiologist who treats a cancer patient, the court said in Johnson at 152:

If competent evidence establishes that the average cardiologist would either refer the cancer patient to an oncologist or would consult with an oncologist, the cardiologist could be found negligent for not referring or consulting.

Captain of Ship Doctrine. In a recent decision, the plaintiff in a medical malpractice action argued that the surgeon should be held vicariously liable for the negligence of two hospital nurses from a county-owned hospital who were responsible for counting sponges. Lewis v. Physicians Ins. Co., 2001 WI 60, 243 Wis.2d 648, 627 N.W.2d 484. The hospital was county-owned and, therefore, its liability at the time was limited to \$50,000.

The trial court, on summary judgment, agreed with the plaintiff's argument that, as a matter of law, the surgeon is the "captain of the ship" and is responsible for the actions of the parties that were in the operating room. Interestingly, the plaintiff did not argue that the surgeon was vicariously liable for the nurses' actions under the doctrine of respondeat superior. Both the court of appeals and supreme court rejected the adoption of the captain of the ship doctrine to impose liability on the doctor. The supreme court said the "captain of the ship doctrine" has lost its vitality across the country as plaintiffs have been able to sustain actions against full-care modern hospitals for the negligence of their employees.

Psychiatric Malpractice Claims. The Wisconsin Supreme Court recognized in Schuster v. Altenberg, *supra*, that a psychiatrist may be negligent by:

1. negligent diagnosing and treating, including failing to warn of side effects of medication,
2. failing to warn a patient's family of the patient's condition and its dangerous implications,
3. failing to seek the commitment of the patient.

Warning a patient of risks associated with a condition and the patient as to appropriate conduct constitutes treatment as to which a physician must use ordinary care. Schuster v. Altenberg, *supra*. A psychiatrist may be held liable to third parties for failing to warn of the side effects of medication if the side effects were such that a patient should have been cautioned against driving, because it was foreseeable that an accident could result causing harm to the patient or third parties.

A psychotherapist has the duty to warn third parties or to institute proceeding for the detention or commitment of a dangerous individual for the protection of the patient or the public.

Dental Malpractice. For dental malpractice, see Wis JI-Civil 1023.14.

Determination of Future Economic Damages. In a claim based on injury from any treatment or operation performed by, or from any omission by, a person who is a health care provider, the determination of future economic damages must reflect present value, life expectancy, and the effects of inflation. Specifically, Wis. Stat. § 893.55(4)(e) states:

(e) Economic damages recovered under ch 655 for bodily injury or death, including any action or proceeding based on contribution or indemnification, shall be determined for the period during which the damages are expected to accrue, taking into account the estimated life expectancy of the person, then reduced to present value, taking into account the effects of inflation.

The Committee interprets this subsection as requiring the jury to make a reduction based on the time value of money and to consider inflation in determining future economic damages. The Committee believes that the statutory language quoted above does not mean that the trial judge should make allowance for present value of money or inflation immediately after the jury has determined economic damages or on motions after verdict.

Medical Negligence Damage Caps. In Ferdon v. Wisc. Patients Compensation Fund, 2005 WI 125, 284 Wis.2d 573, 701 N.W.2d 440, the court held that the \$350,000 cap (adjusted for inflation) on noneconomic medical malpractice damages set forth in Wis. Stat. §§ 655.017 and 893.55(4) violates the equal protection guarantees of the Wisconsin Constitution. Previously, the court had held there is a single cap on noneconomic damages recoverable from health care providers for medical malpractice. Maurin v. Hall, 2004 WI 100, 274 Wis.2d 28, 682 N.W.2d 866. The amount of the cap is determined by whether the patient survives the malpractice or whether the patient dies. When the patient survives, the cap is contained in Wis. Stat. § 893.55(4)(d). When the patient dies, the cap is contained in Wis. Stat. § 895.04(4). In cases where medical malpractice leads to death, the wrongful death cap applies in lieu of - - not in addition to -- the medical malpractice cap. Following Ferdon, the legislature acted to impose a \$750,000 cap on noneconomic damages set forth in Wis. Stat. § 893.55(1d)(b).

The court in Ferdon also created an intermediate level of constitutional review that it called “rational basis with teeth, or meaningful rational basis.” However, in Mayo v. Wisconsin Injured Patients and Families Compensation Fund, 2018 WI 78, 383 Wis.2d 1, 914 N.W.2d 678, the court overruled Ferdon for erroneously invading the province of the legislature and found that rational basis with teeth has no standards for application and created uncertainty under the law. Instead, the court held that rational basis review is appropriate because the cap on noneconomic damages does not deny any fundamental right or implicate any suspect class. When the five-step rational basis scrutiny provided in Aicher v. Wis. Patients Comp. Fund, 2000 WI 98, 237 Wis.2d 99, 613 N.W.2d 849 was applied, the court concluded that “the legislature’s comprehensive plan that guarantees payment while controlling liability for medical malpractice through the use of insurance, contributions to the Fund and a cap on noneconomic damages has a rational basis.” Therefore, the \$750,000 cap on noneconomic damages in medical malpractice actions is not facially unconstitutional.” See Mayo v. Wisconsin Injured Patients and Families Compensation Fund, 2018 WI 78, 383 Wis.2d 1, 31, 914 N.W.2d 678.

Bystander Recovery Claims for Negligent Infliction of Emotional Distress Based on Misdiagnosis. See the committee commentary to Wis. JI-Civil 1510 and 1511.

Answering Special Verdict Questions; Possibility of Inconsistent Verdicts. In medical negligence cases, allowing the jury to award damages regardless of how it answered negligence and cause verdict questions can lead to inconsistent verdicts under Runjo v. St. Paul Fire Marine Ins. Co., 197 Wis.2d 594, 541 N.W.2d 173 (Ct. App. 1995); LaCombe v. Aurora Medical Group, Inc., 2004 WI App 119, 274 Wis.2d 771, 683 N.W.2d 532; Hegarty v. Beauchaine, 2006 WI App 248, 297 Wis.2d 70, 727 N.W.2d 857. In Runjo, the jury was instructed to answer the damage questions only if it affirmatively answered the negligence and cause questions.

1023.5 PROFESSIONAL NEGLIGENCE: LEGAL—STATUS OF LAWYER AS A SPECIALIST IS NOT IN DISPUTE

In providing legal services to a client, it is a lawyer's duty to use the degree of care, skill, and judgment which reasonably prudent lawyers practicing in this state would exercise under like or similar circumstances. A failure to conform to this standard is negligence. The burden is on (plaintiff) to prove that (lawyer) was negligent.

You are to determine whether (lawyer) was negligent in representing (plaintiff) in light of the facts and circumstances of which (lawyer) was aware or should have discovered at the time legal services were provided to (plaintiff). A lawyer is negligent if the lawyer fails to discover or recognize the importance of relevant facts or legal principles which reasonably prudent lawyers would discover or recognize or if the lawyer's skill or judgment was not consistent with that exercised by reasonably prudent lawyers. A lawyer is not negligent because of the results of (his) (her) representation, if (his)(her) efforts were those reasonably prudent lawyers would have taken.

[Use this paragraph if the parties stipulate or the trial judge finds as a matter of law that the lawyer presented himself or herself as a specialist in the relevant area of law: Lawyers who present themselves to the public or their clients as having special experience, knowledge, or skill in a particular area of law are held to the standard of care of reasonably prudent lawyers with that special experience, knowledge, or skill. This is the standard you should apply in considering question _____ of the special verdict.]

You have heard testimony during this trial from lawyers who have testified as expert witnesses. The reason for this is because the degree of care, skill, and judgment which a reasonably prudent lawyer would exercise is not a matter within the common knowledge of lay persons. This standard is within the special knowledge of experts in the

field of law and can only be established by expert testimony. You, therefore, may not speculate or guess what that standard of care, skill, and judgment is in deciding this case, but rather must attempt to determine this from the expert testimony that you heard in this trial.

(Also Give Wis JI-Civil 265.)

SPECIAL VERDICT

1. Was (lawyer) negligent in providing legal services to (plaintiff)?

Answer: _____

Yes or No

COMMENT

This instruction and comment were approved in 1997. The comment was updated in 1998, 2002, 2003, 2016, 2020, and 2021. If the status of the lawyer as a specialist is in dispute, see Wis JI-Civil 1023.5A.

Consistent with the supreme court's direction in medical malpractice cases, the Committee has eliminated reference to "guaranteed results" and has framed the duty of lawyers in terms of "reasonable care" rather than in reference to what is "usually exercised" by lawyers. See Nowatske v. Osterloh, 198 Wis. 2d 419, 543 N.W.2d 265 (1996), and Comment to Wis JI Civil 1023.

Elements. The Wisconsin Supreme Court has said that the following rule governs legal malpractice actions:

In an action against an attorney for negligence or violation of duty, the client has the burden of proving the existence of the relation of attorney and client, the acts constituting the alleged negligence, that the negligence was the proximate cause of the injury, and the fact and extent of the injury alleged. The last element mentioned often involves the burden of showing that, but for the negligence of the attorney, the client would have been successful in the prosecution or defense of an action. Lewandowski v. Continental Casualty Co., 88 Wis.2d 271, 277, 276 N.W.2d 284 (1979). See also Kraft v. Steinhafel, 2015 WI App 62, 364 Wis.2d 672, 869 N.W.2d 506.

To establish causation and injury in a legal malpractice action, the plaintiff is often compelled to prove the equivalent of two cases in a single proceeding or what has been referred to as a “suit within a suit.” Lewandowski v. Continental Casualty Co., 88 Wis.2d 271, 277, 276 N.W.2d 284 (1979); Helmbrecht v. St. Paul Ins. Co., 122 Wis.2d 94, 103, 362 N.W.2d 118 (1985); see also Pierce v. Colwell, 209 Wis.2d 355, 563 N.W.2d 166 (Ct. App. 1997). This entails establishing that, “but for the negligence of the attorney, the client would have been successful in the prosecution or defense of an action.” Lewandowski, 88 Wis.2d at 277, citing 7 Am. Jur. 2d, Attorneys at Law, sec. 188 at 156 (1963).

In Helmbrecht v. St. Paul Ins. Co., supra, the court made several important holdings which cleared up some uncertainty. First, in calculating damages due to the loss of a claim, an objective standard should be used, i.e., what a reasonable judge (jury) would have awarded in the initial action. Second, the court said the Code of Professional Responsibility, although beneficial as an ethical guide, “does not exhaustively define the obligations an attorney owes his client,” nor does it “undertake to define standards for civil liability of lawyers for professional conduct.” 122 Wis.2d at 111.

In Denzer v. Rouse, 48 Wis.2d 528, 534 180 N.W.2d 521 (1970), the court said that “between the end points of competence and malpractice lies a broad area of difficult and complex situations in which an attorney is bound to exercise his best judgment in the light of his education and experience, but is not held to a standard of perfection or infallibility of judgment.”

Cause. The court of appeals in 1997 considered the following question: When a client is represented sequentially by two lawyers, both of whom were arguably negligent with respect to the same manner, can the first lawyer’s alleged negligence be a cause of the client’s damages if the client would not have sustained any damage if the second lawyer could have prevented the harm but did not? The court of appeals concluded that the answer to this question was “no.” Seltrecht v. Bremer, 214 Wis.2d 110, 571 N.W.2d 686 (Ct. App. 1997).

Outcome of Representation. In DeThorne v. Bakken, 196 Wis. 2d 713, 539 N.W.2d 695 (1995), the court of appeals considered a lawyer’s mistaken judgment that was made in good faith. The court stated: “we will not hold attorneys responsible when their decisions are ones that a reasonably prudent attorney might make even though they are later determined by a court of law to be erroneous.” Id. at 724. The Committee believes that juries should be informed that the outcome of the representation is not determinative of lawyer’s negligence. The jury should, instead, determine whether the representation conformed with reasonable care, considering all of the evidence.

Nature of Representation. If there is a dispute concerning the nature or scope of the representation, add the following paragraph:

Whether (lawyer) has discharged (his) (her) duty depends on the purpose for which (lawyer) was retained or agreed to provide representation. The purpose (or scope) of the representation for which the (lawyer) was retained is for you to determine from the evidence. It is irrelevant to the determination of the lawyer’s negligence whether the lawyer was paid.

Specialists. The court of appeals has adopted the higher standard of care for lawyers who represent themselves as specialists in Duffy Law Office v. Tank Transport, Inc., 194 Wis. 2d 675, 535 N.W.2d 91 (1995). The Committee recommends use of the higher standard paragraph when the trial court finds that there is credible evidence of such representation by the lawyer. See also JI-Civil 1023.5A. Since most areas of practice do not have State Bar sanctioned specialty certification, these

cases will generally present a question of fact concerning whether the lawyer held himself or herself out as a specialist to the public or to the particular client. (Patent and admiralty practice have recognition as specialists by policy and tradition in federal courts.)

Contributory Negligence. The contributory negligence of a client can be a defense in a legal malpractice action. Gustavson v. O'Brien, *supra* at 204.

Tort Versus Contract Claim. The Wisconsin Supreme Court has stated that legal malpractice may give rise to either a tort claim or a contract claim. The tort claim arises from a breach of the attorney's common law duty; whereas, the contract claim arises from a breach of a duty created by contractual agreement between the attorney and the client. See Milwaukee County v. Schmidt, Gardner, and Erickson, 43 Wis.2d 445, 168 N.W.2d 559 (1969); Klingbeil v. Saucerman, 165 Wis. 60, 160 N.W. 1051 (1917).

Expert Testimony. Expert testimony is not required to establish a standard of care in cases involving conduct not necessarily related to legal expertise where the matters to be proved do not involve special knowledge or skill or experience on subjects which are not within the realm of the ordinary experience of mankind and which require special learning, study, or experience. Nor is expert testimony required where no issue is raised as to defendant's responsibility, where the negligence of defendant is apparent and undisputed, and where the record discloses obvious and explicit carelessness in defendant's failure to meet the duty of care owed to plaintiff for the court will not require expert testimony to define further that which is already abundantly clear. Olfe v. Gordon, 93 Wis.2d 173, 286 N.W.2d 573 (1980). See also Kraft v. Steinhafel, 2015 WI App 62, 364 Wis.2d 672, 869 N.W.2d 506; DeThorne v. Bakken, 196 Wis. 2d 713, 718, 539 N.W.2d 695 (1995). In Olfe v. Gordon, *supra*, the client's claim alleged negligence by the attorney in failing to follow specific instructions. The court concluded that proof of this negligence does not require expert testimony. Such a claim is controlled by the law of agency. Thus, the duties of care owed by the attorney to the client are established not by the legal profession's standards but by the law of agency. The court held that a jury is competent to understand and apply the standards of care to which agents are held. Olfe v. Gordon, *supra* at 184 (citing Wis JI-Civil 4000, Agency: Definition, and Wis JI-Civil 4020, Agent's Duties Owed to Principal).

Damages. The supreme court has said it is appropriate, in some complex cases, for the trial judge to determine reasonable attorney's fees as a matter of law. See Glamann v. St. Paul Fire & Marine Ins., 144 Wis.2d 865, 424 N.W.2d 924 (1988). For the determination and awarding of attorney fees (both trial and appellate), see Glamann, *supra* at 870-75.

Legal Malpractice Claim for Criminal Defense. The court of appeals has held that, in a legal malpractice claim for criminal defense, the plaintiff must prove that he or she did not commit the offenses of which he or she was convicted. Hicks v. Nunnery, 253 Wis.2d 721, 643 N.W.2d 809 (2002). This proof requirement is commonly referred to as the "actual innocence" rule, and was adopted in Hicks as a matter of public policy. More specifically, this rule is meant to prevent individuals who commit criminal offenses and are convicted of those crimes from recovering damages for legal malpractice. In such a case, the following language is suggested:

Question no. _____ asks whether (Plaintiff) is innocent of the charge of _____.
This charge consists of the following elements: (Here explain the elements of the offense from the appropriate instruction in Wisconsin Jury Instructions-Criminal.)

(Plaintiff) has the burden of proof to satisfy you by the greater weight of the credible evidence, to a reasonable certainty, that (he) (she) is innocent.

[Give JI-Civil 200, Ordinary Burden of Proof]

The suggested question for the special verdict is:

Was Plaintiff innocent of the charge of _____?

The court of appeals in Hicks states that “the question of plaintiff’s innocence is in addition to, not a substitute for, a jury question regarding whether the plaintiff would have been found not guilty absent the defendant’s negligence. A defendant’s negligence must . . . have been a substantial factor contributing to the plaintiff’s conviction.” Thus, the questions of existence of the attorney-client relationship, negligence, causation and damages would be first submitted for the jury’s consideration.

Actual Innocence Rule. The application of the actual innocence rule has been considered in several Wisconsin decisions. As noted, the rule was first adopted in Hicks v. Nunnery, supra, which held that, in addition to proving the four elements of a standard legal malpractice claim, public policy considerations require that a criminal malpractice plaintiff must also establish that he or she “is innocent of the charges of which he [or she] was convicted.” Hicks, supra at ¶46. This is true even if a plaintiff can prove that his or her conviction resulted from their attorney’s failure “to bring a clearly meritorious motion to suppress evidence that establishes guilt, which the state could not prove without it[.]” Id. at ¶43.

The court of appeals later relied on the actual innocence rule adopted by Hicks in Tallmadge v. Boyle, 300 Wis.2d 510, 730 N.W.2d 173 (2007). In this decision, the court stated that the public policy considerations supporting the actual innocence rule require that the criminal malpractice plaintiff must “prove that ‘but for’ that defense counsel’s actions, the convicted criminal would be free.” Id. at ¶22. This principle was later refined in Skindzelewski v. Smith, 2020 WI 57, 392 Wis.2d 117, 944 N.W.2d 575. In that case, the claimant conceded his guilt to the underlying offense but advocated for an exception to the actual innocence rule because his attorney had negligently failed to raise a statute of limitations defense that would have precluded his conviction. Stating that such an exception would be contrary to public policy considerations and would reward criminality, the court in Skindzelewski explained that even if an attorney’s negligence results in a conviction that is unauthorized by law, there is no applicable exception to the actual innocence rule if the error does not negate a guilty defendant’s culpability. Id. at 128. The court concluded that “[T]he law bars such legal malpractice claims because even if an attorney’s negligence harms a defendant by adversely affecting the outcome of the case, attorney error does not negate a guilty defendant’s culpability.” Id. at 130.

Nonliability of an Attorney to a Non-Client. A longstanding rule in Wisconsin is that an attorney is not liable to a non-client for “acts committed in the exercise of his [or her] duties as an attorney. See Auric v. Continental Cas. Co., 111 Wis.2d 507, 512, 331 N.W.2d 325 (1983). However, there are exceptions to this rule in the context of estate planning. The “Auric exception,” established in Auric, holds that the beneficiary of a will may maintain an action against an attorney who negligently drafted or supervised the execution of a will even though the beneficiary is a third-party not in privity with the attorney. In general, this exception allows a named beneficiary to sue an attorney for malpractice when the beneficiary can show that he or she was harmed by attorney negligence that frustrated the intent of the attorney’s client.

In 2009, the post-Auric decision of Tensfeldt v. Haberman, 2009 WI 77, 319 Wis.2d 329, 768 N.W.2d 641 seemed to narrowly limit the Auric exception to negligence by an attorney in drafting or supervising the execution of an estate-planning document which resulted in a loss to a named beneficiary. However, the supreme court's holding in MacLeish v. Boardman Clark LLP, 2019 WI 31, 386 Wis.2d 50, 924 N.W.2d 799, provided that "[t]he narrow Auric exception to the rule of nonliability of an attorney to a non-client applies to the administration of an estate in addition to the drafting of a will. That is, a non-client who is a named beneficiary in a will has standing to sue an attorney for malpractice if the beneficiary can demonstrate that the attorney's negligent administration of the estate thwarted the testator's clear intent." Id. at ¶48.

For estate planning post-MacLeish, see Pence v. Slate, 387 Wis.2d 685, 928 N.W.2d 806 (Table), 2019 WI App 26.

Negligence; Standard of Care. See the comment to Wis JI-Civil 1005.

1023.6 NEGLIGENCE OF INSURANCE AGENT

An insurance agent, such as (defendant), must use the degree of care, skill, and judgment which is usually exercised under the same or similar circumstances by insurance agents licensed to sell insurance in Wisconsin.

While there is no duty to advise the policy holder of coverages available, the agent must use reasonable skill and diligence to put into effect the insurance coverage requested by his or her policy holder, act in good faith towards that policy holder, and inform him or her of the minimum statutory requirements. A failure on the agent's part to use that skill or diligence constitutes negligence.

[If evidence as to a special relationship is shown, then add the following:

(Plaintiff) contends that a special relationship existed between (him)(her) and (defendant).

If a special relationship did exist, then _____ had the duty to advise _____ about the types of insurance coverages that would be available to (him)(her) and the amount of insurance coverage that would be appropriate for (him)(her).

In determining whether a special relationship existed, you should consider the following factors:

1. Whether (defendant) held (himself)(herself) out to the public as a skilled insurance advisor or consultant;
2. Whether (defendant) took it upon (himself)(herself) to actually advise (plaintiff) on the coverages (plaintiff) should have beyond the usual relationship of agent and policy holder;
3. Whether the policy holder relied on the agent's expertise;

4. Whether an additional fee was paid to the agent for special consultation and advice; and
5. Whether there was a long established relationship of entrustment between the agent and the insured.

If you find that a special relationship existed between (plaintiff) and (defendant), then (defendant) had the duty to advise (plaintiff) about available insurance coverages and recommend the appropriate amount of insurance coverage necessary to protect the insured.]

[If contributory negligence is an issue, then give the following:

An insured, such as (plaintiff), has a duty to use ordinary care when purchasing an insurance policy. Ordinary care is that degree of care that a reasonably prudent person would use under the same or similar circumstances.

When purchasing a policy, an insured must advise his or her agent of the type of insurance wanted, including the limits of the policy to be issued. An insured must read the policy once it is delivered to determine whether it provides the insurance coverage requested. However, an insured is not bound to comprehend every term and condition in the policy. An insured is only required to act as a reasonably prudent person would act under the same or similar circumstances. A failure to exercise ordinary care by the insured constitutes negligence.]

COMMENT

This instruction was approved by the Committee in 1992. The comment was updated in 1995, 2016, and 2021.

The general duty of care of an insurance agent does not include a duty to advise a prospective policy holder regarding the availability or adequacy of certain types of coverages, including underinsured motorist coverage. Nelson v. Davidson, 155 Wis. 2d 674, 680-82, 456 N.W.2d 343 (1990). Only paragraphs 1 and 2 apply to a case premised upon an insurance agent's failure to procure coverage that a client actually requested the agent to procure. See Appleton Chinese Food v. Murken Ins., 185 Wis.2d 791, 519 N.W.2d 674 (1994).

Absent a special relationship, an agent's sole duty is to act in good faith, carry out the insured's instructions, and mention minimum statutory requirements. Nelson, at 681-82, Tackes v. Milwaukee Carpenters Health Fund, 164 Wis.2d 707, 476 N.W.2d 311 (Ct. App. 1991).

To constitute a special relationship between the parties, the agent must have assumed the role of a highly skilled consultant. Nelson, at 683-84.

The agent has no duty to advise a prospective insured regarding the availability of higher uninsured motorist limits than selected by the insured. The policy holder determines whether additional protection is necessary and whether to pay higher premiums for that additional coverage. Meyer v. Norgaard, 160 Wis.2d 794, 467 N.W.2d 141 (Ct. App. 1991), rev. denied.

Negligence; Standard of Care. See the comment to Wis JI-Civil 1005.

Negligence; Causation. In order to establish causation, the plaintiff bears the burden of proving that the defendant's negligence was a substantial factor in causing the plaintiff's harm. See Wis JI-Civil 1500. In a negligent procurement claim, commercial availability of an insurance policy is a necessary condition to a successful claim. However, commercial availability does not fully answer whether the desired policy was available within the meaning of the "substantial factor" test and is therefore insufficient to establish causation. See Camper Corral v. Alderman, 2020 WI 46, ¶36, 391 Wis. 2d 674, 943 N.W.2d 513. In other words, without evidence that an insurer would have written a policy with the requested terms, for that particular insured, "it is not possible to say" that the insurance agent's negligence in procuring the desired coverage was a substantial factor in causing the loss. Id. at ¶36.



WISCONSIN JURY INSTRUCTIONS

CIVIL

VOLUME II

Wisconsin Civil Jury
Instructions Committee

- Release No. 52

WIS JI-CIVIL

TABLE OF CONTENTS

VOLUME II

NEGLIGENCE (Continued)

- 1500 Cause (2021)
- 1501 Cause: Normal Response (1998)
- 1505 Cause: Where Cause of Death is in Doubt (1998)
- 1506 Cause: Relation of a Medical Procedure to the Accident (1998)
- 1510 Negligent Infliction of Severe Emotional Distress (Bystander Claim) (2014)
- 1511 Personal Injuries: Negligent Infliction of Severe Emotional Distress
(Separate or Direct Claim) (2018)

Comparative Negligence

- 1580 Comparative Negligence: Plaintiff and One or More Defendants (2011)
- 1582 Comparative Negligence: Adult and Child (1990)
- 1585 Comparative Negligence: Plaintiff-Guest and Host-Defendant
Negligent (1992)
- 1590 Comparative Negligence: Plaintiff-Guest Passively Negligent; Host (Or
Other Driver) Negligent (2003)
- 1591 Comparative Negligence: Guest Passively Negligent; Claims Against and
Among Drivers; Apportionment from One Comparative Negligence
Question (2015)
- 1592 Comparative Negligence: Guest Passively Negligent; Claims Against and
Among Drivers; Apportionment of Comparative Negligence from Two
Questions (2003)
- 1595 Comparative Negligence: Where Negligence or Cause Question Has Been
Answered by Court (1990)

Imputed Negligence

- 1600 Servant: Driver of Automobile (Presumption from Ownership of Vehicle) (2003)
- 1605 Driver: Scope of Employment (2014)
- 1610 Joint Adventure (Enterprise): Automobile Cases (1990)

Damages

- 1700 Damages: General (2016)
- 1705 Damages: Burden of Proof in Tort Actions: Future Damages [Withdrawn 2001]
- 1707 Punitive Damages: Nonproducts Liability [For Actions Commenced Before May 17, 1995] (1996)
- 1707A Punitive Damages: Products Liability [For Actions Commenced Before May 17, 1995] (1996)
- 1707.1 Punitive Damages: Nonproducts Liability (2018)
- 1707.2 Punitive Damages: Products Liability (2008)
- 1708 Battery: Punitive Damages: Mitigation by Provocation [Withdrawn © 2010]
- 1710 Aggravation of Injury Because of Medical Negligence (2015)
- 1715 Aggravation of Pre-existing Injury (1990)
- 1720 Aggravation or Activation of Latent Disease or Condition (1992)
- 1722 Damages from Nonconcurrent or Successive Torts (1992)
- 1722A Damages from Nonconcurrent or Successive Torts (To be used where several tortfeasors are parties) (1996)
- 1723 Enhanced Injuries (2009)
- 1725 Further Injury in Subsequent Event (2003)
- 1730 Damages: Duty to Mitigate: Physical Injuries (2012)
- 1731 Damages: Duty to Mitigate: Negligence or Breach of Contract (2012)
- 1732 Damages: Duty to Mitigate: Intentional Tort (2012)
- 1735 Damages: Not Taxable as Income (1990)
- 1740 Damages: Common Scheme or Plan; Concerted Action (Wis. Stat. § 895.045(2)) (2009)
- 1741 Personal Injuries: Negligence in Informing the Patient (2015)
- 1742 Personal Injuries: Medical Care: Offsetting Benefit from Operation Against Damages for Negligence in Informing the Patient (2015)

1749	Personal Injuries: Conversion Table for 1998 Revision of Damage Instructions (1998)
1750.1	Personal Injuries: Subdivided Question as to Past and Future Damages (1998)
1750.2	Personal Injuries: Past and Future: One Verdict Question (Except Past Loss of Earnings and Past Medical Expenses) (1998)
1754	Personal Injury: One Subdivided Question as to Past Damages [Withdrawn © 1998]
1756	Personal Injuries: Past Health Care Expenses (2015)
1757	Personal Injuries: Past Health Care Expenses (Medical Negligence Cases) (Negligence of Long-Term Care Provider): Collateral Sources (2013)
1758	Personal Injuries: Future Health Care Expenses (2010)
1760	Personal Injuries: Past Loss of Earning Capacity (2016)
1762	Personal Injuries: Future Loss of Earning Capacity (2003)
1766	Personal Injuries: Past Pain, Suffering, and Disability (Disfigurement) (2009)
1767	Personal Injuries: Future Pain, Suffering, and Disability (Disfigurement) (1999)
1768	Personal Injuries: Past and Future Pain, Suffering, and Disability (Disfigurement) (1998)
1770	Personal Injuries: Severe Emotional Distress (2006)
1780	Personal Injuries: Loss of Business Profits [Withdrawn 1998]
1785	Personal Injuries: Past Loss of Professional Earnings [Withdrawn 1998]
1788	Loss of Earnings: Delay in Obtaining Degree [Withdrawn 1999]
1795	Personal Injury: Life Expectancy and Mortality Tables (1992)
1796	Damages: Present Value of Future Losses (2003)
1797	Damages: Effects of Inflation (1993)
1800	Property: Loss of Use of Repairable Automobile (1997)
1801	Property: Loss of Use of Nonrepairable Automobile (1997)
1803	Property: Destruction of Property (2010)
1804	Property: Damage to Repairable Property (2010)
1805	Property: Damage to Nonrepairable Property (2010)
1806	Property: Damage to a Growing Crop (1997)
1810	Trespass: Nominal Damages (2013)
1812	Quantum Meruit: Measure of Services Rendered (1992)
1815	Injury to Spouse: Loss of Consortium (2012)
1816	Injury to Spouse: Past Loss of Earning Capacity: Household Services (1993)
1817	Injury to Spouse: Future Loss of Earning Capacity: Household Services (2001)
1820	Injury to Spouse: Nursing Services: Past and Future (1992)
1825	Injury to Wife: Medical and Hospital Expenses [Withdrawn 1995]
1830	Injury to Wife: Medical and Hospital Bills: Dispute over Ownership of Claim [Withdrawn 1995]

- 1835 Injury to Minor Child: Parent's Damages for Loss of Child's Earnings and Services: Past and Future (2001)
- 1837 Injury to Minor Child: Parent's Damages for Loss of Society and Companionship (2001)
- 1838 Injury to Parent: Minor Child's Damages for Loss of Society and Companionship (2001)
- 1840 Injury to Minor Child: Parents' Damages for Medical Expenses: Past and Future (1996)
- 1845 Injury to Child: Parents' Damages for Services Rendered to Child: Past and Future (1992)
- 1850 Estate's Recovery for Medical, Hospital, and Funeral Expenses (2016)
- 1855 Estate's Recovery for Pain and Suffering (2018)
- 1860 Death of Husband: Pecuniary Loss [Withdrawn 1992]
- 1861 Death of Spouse (Domestic Partner): Pecuniary Loss (2010)
- 1865 Death of Wife: Pecuniary Loss [Withdrawn 1992]
- 1870 Death of Spouse: Surviving Spouse's Loss of Society and Companionship (2019)
- 1875 Death of Spouse: Medical, Hospital, and Funeral Expenses (1992)
- 1880 Death of Parent: Pecuniary Loss (2016)
- 1885 Death of Adult Child: Pecuniary Loss (2001)
- 1890 Damages: Death of Minor Child: Premajority Pecuniary Loss (2001)
- 1892 Damages: Death of Minor Child: Postmajority Pecuniary Loss (2001)
- 1895 Death of Child: Parent's Loss of Society and Companionship (2019)
- 1897 Death of Parent: Child's Loss of Society and Companionship (2019)

Safe Place

- 1900.2 Safe-Place Statute: Duty of Employer (1992)
- 1900.4 Safe-Place Statute: Injury to Frequenter: Negligence of Employer or Owner of a Place of Employment (2021)
- 1901 Safe-Place Statute: Definition of Frequenter (1996)
- 1902 Safe-Place Statute: Negligence of Plaintiff Frequenter (2004)
- 1904 Safe-Place Statute: Public Buildings: Negligence of Owner (1990)
- 1910 Safe-Place Statute: Place of Employment: Business (1990)
- 1911 Safe-Place Statute: Control (1992)

Nuisance

- 1920 Nuisance: Law Note (2019)
- 1922 Private Nuisance: Negligent Conduct (2010)
- 1924 Private Nuisance: Abnormally Dangerous Activity: Strict Liability (2010)
- 1926 Private Nuisance: Intentional Conduct (2010)
- 1928 Public Nuisance: Negligent Conduct (2010)
- 1930 Public Nuisance: Abnormally Dangerous Activity: Strict Liability (2010)
- 1932 Public Nuisance: Intentional Conduct (2010)

INTENTIONAL TORTS**Assault and Battery**

- 2000 Intentional Tort: Liability of Minor (2014)
- 2001 Intentional Versus Negligent Conduct (1995)
- 2004 Assault (2011)
- 2005 Battery (2011)
- 2005.5 Battery: Offensive Bodily Contact (2015)
- 2006 Battery: Self-Defense (2013)
- 2006.2 Battery: Self-Defense; Defendant's Dwelling, Motor Vehicle, Place of Business;
Wis. Stat. § 895.62 (2016)
- 2006.5 Battery: Defense of Property (2013)
- 2007 Battery: Liability of an Aider and Abettor (2011)
- 2008 Battery: Excessive Force in Arrest (2002)
- 2010 Assault and Battery: Offensive Bodily Contact
[Renumbered JI-Civil- 2005.5 2011]
- 2020 Sports Injury: Reckless or Intentional Misconduct (2018)

False Imprisonment

- 2100 False Imprisonment: Definition (2014)
- 2110 False Imprisonment: Compensatory Damages (2014)
- 2115 False Arrest: Law Enforcement Officer; Without Warrant (1993)

Federal Civil Rights

- 2150 Federal Civil Rights: §§ 1981 and 1982 Actions (1993)
- 2151 Federal Civil Rights: § 1983 Actions (2014)
- 2155 Federal Civil Rights: Excessive Force in Arrest (in Maintaining Jail Security) (2014)

Conversion

- 2200 Conversion: Dispossession (2014)
- 2200.1 Conversion: Refusal to Return Upon Demand (Refusal by Bailee) (1993)
- 2200.2 Conversion: Destruction or Abuse of Property (1991)
- 2201 Conversion: Damages (2016)

Misrepresentation

- 2400 Misrepresentation: Bases for Liability and Damages - Law Note for Trial Judges (2021)
- 2401 Misrepresentation: Intentional Deceit (2018)
- 2402 Misrepresentation: Strict Responsibility (2018)
- 2403 Misrepresentation: Negligence (2018)
- 2405 Intentional Misrepresentation: Measure of Damages in Actions Involving Sale [Exchange] of Property (Benefit of the Bargain) (2018)
- 2405.5 Strict Responsibility: Measure of Damages in Actions Involving Sale [Exchange] of Property (Benefit of the Bargain) (2018)
- 2406 Negligent Misrepresentation: Measure of Damages in Actions Involving Sale [Exchange] of Property (Out of Pocket Rule) (2014)
- 2418 Unfair Trade Practice: Untrue, Deceptive, or Misleading Representation: Wis. Stat. § 100.18(1) (2021)
- 2419 Property Loss Through Fraudulent Misrepresentation: Wis. Stat. § 895.446 (Based on Conduct (Fraud) Prohibited by Wis. Stat. § 943.20) (2018)
- 2420 Civil Theft: Wis. Stat. § 895.446 (Based on Conduct (Theft) Prohibited by Wis. Stat. § 943.20(1)(a)) (2019)

Defamation

- 2500 Defamation - Law Note for Trial Judges (2016)
- 2501 Defamation: Private Individual Versus Private Individual, No Privilege (2003)
- 2505 Defamation: Truth as a Defense (Nonmedia Defendant) (2014)
- 2505A Defamation: Truth of Statement (First Amendment Cases) (1989)
- 2507 Defamation: Private Individual Versus Private Individual with Conditional Privilege (2020)
- 2509 Defamation: Private Individual Versus Media Defendant (Negligent Standard) (2003)
- 2510 Defamation: Truth as Defense Where Plaintiff Charged with Commission of a Crime [Withdrawn 1993]
- 2511 Defamation: Public Figure Versus Media Defendant or Private Figure with Constitutional Privilege (Actual Malice) (2003)
- 2512 Defamation: Truth as Defense Where Plaintiff Not Charged with Commission of a Crime [Withdrawn 1993]
- 2513 Defamation: Express Malice (1993)
- 2514 Defamation: Effect of Defamatory Statement or Publication [Withdrawn 1993]
- 2516 Defamation: Compensatory Damages (1991)
- 2517 Defamation: Conditional Privilege: Abuse of Privilege [Renumbered JI-Civil 2507 1993]
- 2517.5 Defamation: Public Official: Abuse of Privilege [Renumbered JI-Civil 2511 1993]
- 2518 Defamation: Express Malice [Renumbered JI-Civil 2513 1993]
- 2520 Defamation: Punitive Damages (2003)
- 2550 Invasion of Privacy (Publication of a Private Matter) Wis. Stat. § 995.50(2)(c) (2015)
- 2551 Invasion of Privacy: Highly Offensive Intrusion; Wis. Stat. § 995.50(2)(a) (2011)
- 2552 Invasion of Privacy: Publication of a Private Matter: Conditional Privilege (2003)

Misuse of Procedure

- 2600 Malicious Prosecution: Instituting a Criminal Proceeding (2015)
- 2605 Malicious Prosecution: Instituting a Civil Proceeding (2015)

- 2610 Malicious Prosecution: Advice of Counsel: Affirmative Defense
(Criminal Proceeding) (2015)
- 2611 Malicious Prosecution: Advice of Counsel: Affirmative Defense
(Civil Proceeding) (2015)
- 2620 Abuse of Process (2013)

Trade Practices

- 2720 Home Improvement Practices Act Violation; Wisconsin Administrative Code
Chapter ATCP 110; Wis. Stat. § 100.20 (2013)
- 2722 Theft by Contractor (Wis. Stat. § 779.02(5)) (2015)

Domestic Relations

- 2725 Intentional Infliction of Emotional Distress (2020)

Business Relations

- 2750 Employment Relations: Wrongful Discharge - Public Policy (2020)
- 2760 Bad Faith by Insurance Company (Excess Verdict Case) (2003)
- 2761 Bad Faith by Insurance Company: Assured's Claim (2012)
- 2762 Bad Faith by Insurance Company: Third Party Employee Claim Against
Worker's Compensation Carrier [Withdrawn] (2009)
- 2769 Wisconsin Fair Dealership Law: Existence of Dealership (2020)
- 2770 Wisconsin Fair Dealership Law: Good Cause for Termination, Cancellation,
Nonrenewal, Failure to Renew, or Substantial Change in Competitive
Circumstances (Wis. Stat. § 135.03) (2005)
- 2771 Wisconsin Fair Dealership Law: Adequate Notice by Grantor
(Wis. Stat. § 135.04) (2005)
- 2772 Wisconsin Fair Dealership Law: Special Verdict (2005)
- 2780 Intentional Interference with Contractual Relationship (2020)
- 2790 Trade Name Infringement (2020)
- 2791 Trade Name Infringement: Damages (2010)

Civil Conspiracy

- 2800 Conspiracy: Defined (2018)
- 2802 Conspiracy: Proof of Membership (2003)
- 2804 Conspiracy: Indirect Proof (2003)
- 2806 Conspiracy to be Viewed as a Whole (1993)
- 2808 Conspiracy between Affiliated Corporations (2009)
- 2810 Conspiracy: Overt Acts (2003)
- 2820 Injury to Business: (Wis. Stat. § 134.01) (2008)
- 2822 Restraint of Will (Wis. Stat. § 134.01) (2003)

Tort Immunity

- 2900 Tort Immunity: Immunities Abrogated - Law Note for Trial Judges (1993)

CONTRACTS**General**

- 3010 Agreement (2011)
- 3012 Offer: Making (1993)
- 3014 Offer: Acceptance (1993)
- 3016 Offer: Rejection (1993)
- 3018 Offer: Revocation (1993)
- 3020 Consideration (1993)
- 3022 Definiteness and Certainty (1993)
- 3024 Implied Contract: General (1993)
- 3026 Implied Contract: Promise to Pay Reasonable Value (1993)
- 3028 Contracts Implied in Law (Unjust Enrichment) (2020)
- 3030 Modification by Mutual Assent (1993)
- 3032 Modification by Conduct (1993)
- 3034 Novation (1993)
- 3040 Integration of Several Writings (1993)
- 3042 Partial Integration: Contract Partly Written, Partly Oral (1993)

3044	Implied Duty of Good Faith (Performance of Contract) (2007)
3045	Definitions - "Bona Fide" (1993)
3046	Implied Promise of No Hindrance (1993)
3048	Time as an Element (2016)
3049	Duration (2016)
3050	Contracts: Subsequent Construction by Parties (1993)
3051	Contracts: Ambiguous Language (2012)
3052	Substantial Performance (1994)
3053	Breach of Contract (2007)
3054	Demand for Performance (2014)
3056	Sale of Goods: Delivery or Tender of Performance (1993)
3057	Waiver (2018)
3058	Waiver of Strict Performance (1993)
3060	Hindrance or Interference with Performance (1993)
3061	Impossibility: Original (1993)
3062	Impossibility: Supervening (1993)
3063	Impossibility: Partial (1993)
3064	Impossibility: Temporary (1993)
3065	Impossibility: Superior Authority (1993)
3066	Impossibility: Act of God (1993)
3067	Impossibility: Disability or Death of a Party (1993)
3068	Voidable Contracts: Duress, Fraud, Misrepresentation (2016)
3070	Frustration of Purpose (2020)
3072	Avoidance for Mutual Mistake of Fact (2014)
3074	Estoppel: Law Note for Trial Judges (2018)
3076	Contracts: Rescission for Nonperformance (2001)
3078	Abandonment: Mutual (1993)
3082	Termination of Servant's Employment: Indefinite Duration (1993)
3083	Termination of Servant's Employment: Employer's Dissatisfaction (1993)
3084	Termination of Servant's Employment: Additional Consideration Provided by Employee (1993)

Real Estate

3086	Real Estate Listing Contract: Validity: Performance (2019)
3088	Real Estate Listing Contract: Termination for Cause (1993)
3090	Real Estate Listing Contract: Broker's Commission on Sale Subsequent to Expiration of Contract Containing "Extension" Clause (1993)
3094	Residential Eviction: Possession of Premises (2020)
3095	Landlord - Tenant: Constructive Eviction (2013)

1500 CAUSE

In answering question(s) _____, you must decide whether someone's negligence caused the (accident) (injury). (This) (These) question(s) (does) (do) not ask about "**the** cause" but rather "**a** cause" because an (accident) (injury) may have more than one cause. Someone's negligence caused the (accident) (injury) if it was a substantial factor in producing the (accident) (injury). An (accident) (injury) may be caused by one person's negligence or by the combined negligence of two or more people.

COMMENT

This instruction was originally approved in 1989. It was revised in 1999, 2005, and 2021.

This instruction is based on Pfeifer v. Standard Gateway Theater, Inc., 262 Wis. 229, 236-38, 55 N.W.2d 29 (1952), and Osborne v. Montgomery, 203 Wis. 223, 242, 234 N.W. 372 (1931). It was approved in Ayala v. Farmers Mut. Auto Ins. Co., 272 Wis. 629, 639-40, 76 N.W.2d 563 (1956).

In Wisconsin, the test for whether negligence was causal is whether that negligence was a "substantial factor" in causing the injuries. Merco Distributing Corp. v. Commercial Police Alarm Co., Inc., 84 Wis.2d 455, 267 N.W.2d 652 (1978); see also Steinberg v. Jensen, 204 Wis.2d 115, 553 N.W.2d 820 (Ct. App. 1996). It is erroneous to instruct a jury that they must find that the negligence was "the" substantial factor in causing injury. Reserve Supply Co. v. Viner, 9 Wis.2d 530, 101 N.W.2d 663 (1960). In Steinberg v. Jensen, supra, the jury sent a note to the trial court asking: "With the cause question, do we all or only 10 to 2 majority, have to agree on the specific cause. It is sufficient for each of us to have some cause attributed to Dr. Jensen?" The trial judge gave the following supplemental instruction: "Specifically to your question the answer to that is no, not all have to agree but rather a 10 to 2 majority must agree and you must agree on a specific cause in that regard but the numbers are 10 to 2." On appeal, the court of appeals said that although the supplemental causation instruction did not use the term "the substantial factor in causing injury," the instruction implied that the jurors must agree that the negligence was "the cause," rather than "a cause." The use of the term "specific cause" informed the jury that they must agree on a particular, single, exclusive cause in order to answer "yes" to the causation question. The court said that instructing the jury in this manner resulted in a misstatement of the law regarding causation.

Intervening Cause. Where an intervening (superseding) cause allegedly produced by another is interposed as a defense by a defendant charged with the first act of negligence, the jury is first required to find whether the found negligence of such first actor was a substantial factor in causing the accident on which liability is sought to be predicated. See Pfeifer, supra. If the jury finds the negligence of the first actor is a substantial factor, then the defense of intervening cause is unavailing unless the court determines that there are policy factors which should relieve the first actor for liability. Ryan v. Cameron, 270 Wis.

325, 331, 71 N.W.2d 408 (1955); Restatement, Second, Torts § 447 (1934); Campbell, "Law of Negligence in Wisconsin," 1955 Wis. L. Rev. 1, 40.

Public Policy Factors. In 2004, the Wisconsin Supreme Court reviewed the history behind the application of the six public policy factors used to preclude tort liability and the relationship between “public policy” and “proximate cause.” Mackenzie Fandrey v. American Family Mut. Ins. Co., 2004 WI 62, 272 Wis.2d 46, 680 N.W.2d 345. The court said that when “public policy” is used in the context of precluding liability, that term is being used as a *synonym* for “proximate cause.” The supreme court noted that the term “proximate cause” referred to two distinct concepts. The first use of the term was to describe “limitations on liability and on the extent of liability based on lack of causal connection in fact.” The second use of “proximate cause” was to describe limitations on liability and on the extent of liability based on public policy factors making it unfair to hold a party liable for tort damages.

The court said that the first use on meaning of “proximate cause” has long been abandoned in Wisconsin in favor of the “substantial factor” test used to establish cause-in-fact, which is a jury issue. The court then noted that the second use and meaning of “proximate cause” still remains a part of Wisconsin’s legal cause analysis. After reviewing a series of decisions addressing terms such as “cause-in-fact,” “legal cause,” “proximate cause,” and “public policy factors,” the court wrote in a footnote:

“Fn 7. This discussion is not intended as an invitation to reintroduce the term ‘proximate cause’ into Wisconsin’s legal lexicon or to alter the current state of Wisconsin’s tort jurisprudence. Rather, this discussion represents an accurate historical analysis of Wisconsin’s use of the term ‘proximate cause’ in relation to public policy factors. We are simply recognizing that what has previously been labeled as ‘proximate cause,’ *i.e.* the second step in the legal cause analysis, is now referred to as ‘public policy factors.’ This concept has not changed; only the label has done so. We emphasize that this opinion does nothing to change Wisconsin’s common law relating to duty, breach, and cause in negligence claims. Once it is established that a plaintiff’s negligence was a substantial factor in producing an injury, the only limitation on liability is public policy factors--what was previously referred to as ‘proximate cause.’ We use the terms ‘proximate cause’ and ‘public policy factors’ interchangeably only because, historically, Wisconsin courts have used these terms interchangeably.”

In a concurring opinion, Justice Bradley addressed the above quoted footnote as follows:

¶45. The majority, at times, uses the terms “proximate cause” and “public policy” interchangeably. This may leave the reader wondering about the continued vitality of using proximate cause to limit liability. Footnote 7, however, provides the answer. Simply put, in Wisconsin we use public policy factors, not proximate cause, to limit liability.

Cause of Collision v. Cause of Injury. In submitting the cause question relating to a nondriver plaintiff (following a contributory negligence question), the inquiry is usually whether the negligence is a cause of plaintiff’s injuries (or damage) rather than whether it is a cause of the collision. In matters where causation is disputed as to both the accident and the injury, it is error not to instruct the jury on a cause of the accident and a cause of the injury. Failure to do so may lead a jury to be “misled into believing that the ‘a cause’/‘substantial factor’ standard does not apply” to the assessment of the causation of the injuries. Pennell v. Am. Family Mut. Ins. Co., 392 Wis. 2d 2019, 228, 943 N.W.2d 892 (2020).

On distinction of active and passive negligence of a passenger as related to the cause question, see Theisen v. Milwaukee Auto Ins. Co., 18 Wis.2d 91, 105, 118 N.W.2d 140 (1962), and McConville v. State Farm Mut. Auto Ins. Co., 15 Wis.2d 374, 385, 113 N.W.2d 14 (1962).

Lookout and failure to warn on the part of a guest may in exceptional cases be a substantial factor or a cause of the collision or accident, but ordinarily such negligence is not, although it may be, a cause of his or her injuries. Theisen v. Milwaukee Auto Ins. Co., *supra*.

If there is more than one cause, it is prejudicial error to say "the cause" instead of "a cause." Reserve Supply Co. v. Viner, 9 Wis.2d 530, 533, 101 N.W.2d 663 (1960). See also Clark v. Leisure Vehicles, Inc., 96 Wis. 2d 607, 292 N.W.2d 630 (1980).

If there is no issue of comparative negligence, it is preferable to use the term "the cause" instead of "a cause." Spleas v. Milwaukee & Suburban Transp. Corp., 21 Wis.2d 635, 639, 124 N.W.2d 593 (1963). In this instance, eliminate sentences 2 and 3 of the instruction.

The supreme court will follow the substantial factor concept of causation under which there may be several substantial factors contributing to the same result. Sampson v. Laskin, 66 Wis.2d 318, 326, 224 N.W.2d 594 (1975). See also Morgan v. Pennsylvania Gen. Ins. Co., 87 Wis.2d 723, 275 N.W.2d 660 (1979).

It need not be the sole factor, the primary factor, only a substantial factor. Schnabl v. Ford Motor Co., 54 Wis.2d 345, 353-54, 195 N.W.2d 602, 198 N.W.2d 161 (1972).

It is not important that the defects alleged did not cause the initial accident as long as they were a substantial factor in causing injury. Arbet v. Gussarson, 66 Wis.2d 551, 557, 225 N.W.2d 431 (1975). See also Sumnicht v. Toyota Motor Sales, 121 Wis.2d 338, 360 N.W.2d 2 (1984).

The word "substantial" is used to denote the fact that conduct has such an effect in producing the harm as to lead a reasonable person to regard the conduct as a cause of the harm, using the word "cause" in the popular sense in which there always is implicit the idea of responsibility. Retzlaff v. Soman Home Furnishings, 260 Wis. 615, 620, 51 N.W.2d 514 (1952).

The cause may be differently expressed in specific situations. See, for example, Wis JI-Civil 1023.3 Cause in Medical Malpractice—Informed Consent Cases.

Policy Factors. Policy factors may be applied by the court to limit liability for remote, extraordinary, highly unusual, or conscience-shocking results of harm. Farmers Mut. Auto Ins. Co. v. Gast, 17 Wis.2d 344, 117 N.W.2d 347 (1962); Dombrowski v. Albrent Freight & Storage Corp., 264 Wis. 440, 446, 59 N.W.2d 465 (1953); Pfeifer v. Standard Gateway Theater, Inc., *supra* at 238-39; O'Connell v. Old Line Life Ins. Co., 227 Wis. 671, 673-74, 278 N.W. 458 (1938); Osborne v. Montgomery, *supra* at 237; Kerwin v. Chippewa Shoe Mfg. Co., 163 Wis. 428, 431-33, 157 N.W. 1101 (1916); Habrouck v. Armour & Co., 139 Wis. 357, 366, 121 N.W. 157 (1909); Parnell, "Causation," Feb. 1957 Wis. Bar Bull. 17.

1900.4 SAFE PLACE STATUTE: INJURY TO FREQUENTER: NEGLIGENCE OF EMPLOYER OR OWNER OF A PLACE OF EMPLOYMENT

(Give Wis JI-Civil 1005.)

Question 1 asks: Was (defendant) negligent in failing to (construct) (repair) (maintain) the premises as safe as the nature of its business would reasonably permit.

The Wisconsin Legislature enacted a law which is known as the Safe-Place Statute, which applies to this case. That law imposes a duty upon (defendant) in this case to (construct) (repair) (maintain) the premises upon which (plaintiff) was injured so as to make them safe. The law requires (defendant) to (furnish and use safety devices and safeguards) (adopt and use methods and processes) reasonably adequate to render the place of employment safe. Violation of this law is negligence.

The term “safe” or “safety,” as used in this law, does not mean absolute safety. The term “safe” or “safety,” as applied to the premises in this case, means such freedom from danger to the life, health, safety, or welfare of (plaintiff) as the nature of the premises will reasonably permit.

(Defendant) was not required to guarantee (plaintiff)’s safety but rather was required to (construct) (repair) (maintain) the premises as safe as the nature of the place would reasonably permit.

In determining whether (defendant)’s premises were as free from danger as its nature would permit, you will consider the adequacy of the (construction) (repair) (maintenance) of the premises, bearing in mind the nature of the business and the manner in which the business is customarily conducted.

[**Note:** The following paragraph should not be given where the defect is a structural defect: To find that (defendant) failed to (construct) (repair) (maintain) the

premises in question as safe as the nature of the place reasonably permitted, you must find that (defendant) had actual notice of the alleged defect in time to take reasonable precautions to remedy the situation or that the defect existed for such a length of time before the accident that (defendant) or its employees in the exercise of reasonable diligence (this includes the duty of inspection) should have discovered the defect in time to take reasonable precautions to remedy the situation. However, this notice requirement does not apply where (defendant)'s affirmative act created the defect.]

COMMENT

The instruction and comment were approved by the Committee in 1974. The instruction was revised in 1986, 1992, 1995, 1996, 1998, and 2003. This instruction was renumbered in 1976 from Wis JI-Civil 1900. The comment was updated in 1990, 1993, 1995, 1998, 2001, 2003, 2004, 2006, 2014, 2020, and 2021. The instruction was revised in 2003 to specifically refer to the statutory requirements.

See Petoskey v. Schmidt, 21 Wis.2d 323, 124 N.W.2d 1 (1963); For the form of the question, see Petoskey, *supra*; Krause v. V. F. W. Post 6498, 9 Wis.2d 547, 101 N.W.2d 645 (1960).

The safe-place statute imposes a higher standard of care than ordinary negligence at common law, Krause, *supra*; Saxhaug v. Forsyth Leather Co., 252 Wis. 376, 31 N.W.2d 589 (1948); Dykstra v. Arthur G. McKee & Co., 92 Wis.2d 17, 26, 284 N.W.2d 692 (1979); Topp v. Continental Ins. Co., 83 Wis.2d 780, 266 N.W.2d 397 (1978). Although the safe-place statute establishes a higher standard, failure of a safe place claim does not necessarily preclude a common law negligence claim arising out of the same condition. A safe-place statute addresses the condition of the premises while the common law claim looks at negligent acts. Megal v. Green Bay Area Visitor & Convention Bureau, et al., 2004 WI 98, Case No. 02-2932.

The giving of common-law negligence instruction followed by the safe-place instruction was approved in Carr v. Amusement, Inc., 47 Wis.2d 368, 375, 177 N.W.2d 388 (1970).

Although the statute creates a presumption that an injury was caused by a violation of the statute, the presumption does not establish as a matter of law that the defendant's negligence was greater than the plaintiff's, Brons v. Bischoff, 89 Wis.2d 80, 88, 277 N.W.2d 854 (1979); Fondell v. Lucky Stores, *supra*; Imnus v. Wisconsin Public Ser. Corp., 260 Wis. 433, 51 N.W.2d 42 (1952).

In reading Wis. Stat. § 101.11, it is suggested that parts dealing solely with employment be omitted, as well as other portions inappropriate under the facts of the case. A community-based residential facility, as defined in Wis. Stat. § 50.01(1), is a place of employment. Wis. Stat. § 101.11(3).

This instruction applies to an injury to a frequenter. For the definition of “frequenter,” see Wis. Stat. § 101.01(2)(e) and JI-Civil 1901. Independent contractor employee as frequenter – McNally v. Goodenough, 5 Wis.2d 293, 300, 92 N.W.2d 890 (1958); Dykstra, *supra*; Sampson v. Laskin, 66 Wis.2d 318, 326, 224 N.W.2d 594 (1975); Hortman v. Becker Constr. Co., Inc., 92 Wis.2d 210, 226, 284 N.W.2d 621 (1979).

The definition of “safe” and “safety” is from Wis. Stat. § 101.01(2)(g).

Nature of Business. Neitzke v. Kraft-Phenix Dairies, Inc., 214 Wis. 441, 446, 253 N.W. 579 (1934). Free from danger – Olson v. Whitney Bros. Co., 160 Wis. 606, 612-13, 150 N.W. 959 (1915); Dykstra v. Arthur G. McKee & Co., *supra*; Topp v. Continental Ins. Co., *supra* at 788; Fondell v. Lucky Stores, Inc., 85 Wis.2d 220, 230-31, 270 N.W.2d 205 (1978). An Elks Club was held to be a “place of employment” in Schmorrow v. Sentry Ins. Co., 138 Wis.2d 31, 405 N.W.2d 672 (Ct. App. 1987).

The defendant is not a guarantor of a frequenter’s safety. Hipke v. Industrial Comm’n, 261 Wis. 226, 52 N.W.2d 401 (1952).

A business is not an insurer of a frequenter’s safety. Zehren v. F. W. Woolworth Co., *supra*; Dykstra, *supra*; Stefanovich v. Iowa Nat’l Mut. Ins. Co., 86 Wis.2d 161, 166, 271 N.W.2d 867 (1978); May v. Skelly Oil Co., 83 Wis.2d 30, 36, 264 N.W.2d 574 (1978).

Safety is a relative, not an absolute, term. Sykes v. Bensinger Recreation Corp., 117 F.2d 964, 967 (7th Cir. 1941); Heckel v. Standard Gateway Theater, 229 Wis. 80, 281 N.W. 640 (1938); May v. Skelly, *supra*.

The statutory duty is to make the place as safe as the nature and place of employment will reasonably permit. Mullen v. Larson-Morgan Co., 212 Wis. 52, 249 N.W. 67 (1933); Saxhaug v. Forsyth Leather Co., *supra*. This duty is not a lesser standard than that imposed by the common law, Balas v. St. Sebastian’s Congregation, 66 Wis.2d 421, 425, 225 N.W.2d 428 (1975).

A place is safe if it is as free from danger as the nature of the employment will reasonably permit when used in a customary or usual manner for the work intended or in such a manner as an ordinarily prudent and careful person might anticipate it might be used. Olson v. Whitney Bros. Co., *supra*; Topp v. Continental, *supra*.

The words “construction” or “constructing” should be used when, on the facts, faulty construction is involved.

Notice. Werner v. Gimbel Bros., 8 Wis.2d 491, 99 N.W.2d 708 (1959). There is no requirement of notice where the condition was created by the party sought to be charged. Merriman v. Cash-Way, Inc., 35 Wis.2d 112, 150 N.W.2d 472 (1967); Kosnar v. J. C. Penney Co., 6 Wis.2d 238, 242, 277, 132 N.W.2d 595 (1965). Or where the alleged defect is a structural defect Hannebaum v. DiRenzo & Bomier, 162 Wis.2d 488, 469 N.W.2d 900 (Ct. App. 1991); see also Fitzgerald v. Badger State Mut. Casualty Co., 67 Wis.2d 321, 227 N.W.2d 444 (1975). Also, if the defendant claims that no defective condition existed, then proof of notice is not necessary. Petoskey v. Schmidt, *supra*.

The employer must have notice of the defect except where the alleged defect is a structural defect, Fitzgerald, *supra*. Krause v. V. F. W. Post 6498, *supra*; Petric v. Gridley Dairy Co., 202 Wis.

289, 232 N.W. 595 (1930). As to the length of time of notice required, see Bergevin v. Chippewa Falls, 82 Wis. 505, 52 N.W. 588 (1892); Topp v. Continental Ins. Co., *supra* at 780; Fitzgerald v. Badger State Mut. Casualty Co., *supra*, at 326; Dykstra, *supra*; May v. Skelly Oil Co., *supra*, at 36.

Defect Versus Unsafe Condition. This instruction provides that a property owner is liable for injuries caused by a structural defect regardless of whether the owner knew or should have known that the defect existed. However, where the property condition that causes the injury is an unsafe condition associated with the structure, the owner is liable only if it had actual or constructive notice of the condition. This instruction contains an optional paragraph to be used in cases involving a structural defect. This paragraph reads:

[**Note:** The following paragraph should not be given where the defect is a structural defect. To find that (defendant) failed to (construct) (repair) or (maintain) the premises in question as safe as the nature of the place reasonably permitted, you must find that (defendant) had actual notice of the alleged defect in time to take reasonable precautions to remedy the situation or that the defect existed for such a length of time before the accident that (defendant) or its employees in the exercise of reasonable diligence (this includes the duty of inspection) should have discovered the defect in time to take reasonable precautions to remedy the situation. However, this notice requirement does not apply where (defendant)’s affirmative act created the defect.]

A decision of the supreme court discussed whether a loose stairway nosing that caused the plaintiff to fall down stairs was a “structural defect” or an “unsafe condition associated with the structure.” The trial judge found that the loose nosing was a structural defect and, therefore, did not instruct the jury on notice. The court said that the classification of the loose nosing was a question of law. Barry v. Employers Mut. Casualty Co., 2001 WI 101, 245 Wis.2d 560, 630 N.W.2d 517. The court concluded that the nosing was an “unsafe condition.” Thus, the court said the plaintiff was required to prove the defendant property owner had notice of the condition. Because the jury was not instructed on the notice issue, the court said the case was not fully tried and remanded the case. For a discussion of defect versus unsafe condition, see Mair v. Trollhaugen Ski Resort, 2006 WI 61, 291 Wis.2d 132, 715 N.W.2d 598.

Constructive Notice. Constructive notice requires evidence as to the length of time that the condition existed Kaufman v. State Street Ltd. Partnership, 187 Wis.2d 54, 59 (Ct. App., 1994). An owner or employer is deemed to have constructive notice when that defect or condition has existed a long enough time for a reasonably diligent owner to discover and repair it. May v. Skelley Oil Co., 83 Wis.2d 30, 36 (1978); Strack v. Great Atlantic & Pacific Tea Co., 35 Wis.2d 51, 55 (1967). Determining the exact point in time at which an unsafe condition commenced is not an essential condition in establishing constructive notice. Although a plaintiff is still obligated to prove the unsafe condition lasted long enough to establish constructive notice, it is not necessary for the plaintiff to locate the “temporal commencement” of the unsafe condition if the evidence shows it existed long enough to give a reasonably diligent owner an opportunity to discover and remedy it. Correa v. Woodman's Food Market, 2020 WI 43, ¶26, 391 Wis. 2d 651, 943 N.W.2d 535.

“Speculation as to how long the unsafe condition existed and what reasonable inspection would entail are insufficient to establish constructive notice.” Kochanski v. Speedway SuperAmerica, LLC, 2014 WI 72, ¶36, 356 Wis.2d 1, 850 N.W.2d 160. Therefore, before a case may reach the jury, the

plaintiff “must present a quantum of evidence sufficient to render the eventual answer non-speculative.” See Correa v. Woodman's Food Market, *supra* at 662.

Length of time required for constructive notice depends on the surrounding facts and circumstances, including the nature of the business and the nature of the defect. May, 83 Wis.2d 30 at 37. The need for “length of time” evidence (and therefore any constructive notice) is obviated where harm from the method of merchandising is reasonably foreseeable. See Strack, 35 Wis.2d 51 at 55.

Duty to Inspect. Wisconsin Bridge and Iron Co. v. Industrial Comm’n, 8 Wis.2d 612, 618, 99 N.W.2d 817 (1959). There is no duty to inspect and warn unless it is shown that the premises were not in a reasonably safe condition. Balas v. St. Sebastian’s, *supra*.

Acts of Operation Versus an Unsafe Condition. In Stefanovich v. Iowa Nat’l Mut. Ins. Co., *supra*, at 166, the court stated that liability under the safe-place statute is based on unsafe conditions, not unsafe acts. See also Korenak v. Curative Workshop Adult Rehabilitation Center, 71 Wis.2d 77, 84, 237 N.W.2d 43 (1976). Similarly, the court in Leitner v. Milwaukee County, 94 Wis.2d 186, 195, 287 N.W.2d 803 (1980), concluded that injuries to a frequenter caused by unsafe conditions of an employer’s premises are covered by the safe-place statute, while injuries caused by negligent, inadvertent, or even intentional acts committed therein are not. See also Viola v. Wisconsin Electric Power Co., 352 Wis.2d 541, 842 N.W.2d 515 (2014).

Recreational Use Immunity. If a private property owner is immune from liability under Wis. Stat. § 895.52(2), the owner is not subject to liability under the safe-place statute. However, if the recreational use immunity of § 895.52(2) is negated by Wis. Stat. § 895.52(6) (because the owner collects over \$500 in payments), then the safe-place statute may apply to premises used for recreational purposes. Douglas v. Dewey, 154 Wis.2d 451, 453 N.W.2d 500 (Ct. App. 1990).

LAW NOTE FOR TRIAL JUDGES**2400 MISREPRESENTATION: BASES FOR LIABILITY AND DAMAGES**

Wisconsin recognizes three common law categories of misrepresentation: intentional, strict responsibility, and negligent misrepresentation. All three require that the defendant made an untrue representation of fact and that the plaintiff relied upon the representation. Intentional misrepresentation additionally requires that the defendant knowingly or recklessly made the untrue representation with the intent to deceive the plaintiff. Strict responsibility misrepresentation does not require a showing of an intent to deceive, rather the plaintiff must only show that the defendant had an economic interest in the transaction and made the representation on the defendant's personal knowledge under circumstances in which the defendant necessarily ought to have known the truth or untruth of the statement.¹ Negligent misrepresentation differs from intentional and strict responsibility misrepresentation in the circumstances and quality of the representation of fact. Under negligent misrepresentation, the untrue statement of fact need only be "negligently" made rather than intentional and the speaker does not require an economic interest in making the representation.

Intentional Misrepresentation

The elements of intentional misrepresentation are: (1) the defendant made a representation of fact; (2) the representation was untrue; (3) the defendant made the representation either knowing that it was untrue, or recklessly not caring whether it was

true or false; (4) the defendant made the representation with the intent to deceive the plaintiff in order to induce the plaintiff to act to plaintiff's pecuniary damage; and (5) the plaintiff believed that the representation was true and relied on it.² The plaintiff's reliance on the representation must be justifiable.³

Strict Responsibility Misrepresentation

The elements of strict responsibility misrepresentation are: (1) the defendant made a representation of fact; (2) the representation was untrue; (3) the defendant made the representation based on his or her personal knowledge, or was so situated that he or she necessarily ought to have known the truth or untruth of the statement; (4) the defendant had an economic interest in the transaction; and (5) the plaintiff believed that the representation was true and relied on it.⁴ The plaintiff's reliance on the representation must be justifiable.⁵

Strict responsibility applies to those situations where public opinion calls for placing the loss on the innocent defendant rather than on the innocent plaintiff and requires the presence of two factors before liability may be found: (1) "a representation made as of defendant's own knowledge, concerning a matter about which he or she purports to have knowledge, so that he or she may be taken to have assumed responsibility as in the case of warranty, and (2) a defendant with an economic interest in the transaction into which the plaintiff enters so that defendant expects to gain some economic benefit."⁶ The policy behind strict responsibility misrepresentation is that the speaker should know the pertinent

facts of which he or she is speaking or else the speaker should not speak.⁷

The doctrine of strict responsibility misrepresentation has primarily been utilized in cases involving property transactions,⁸ such as where there has been a representation as to the identification, boundaries, quantity and quality of the land, and existence of certain improvements upon the land, all of which were untrue. As discussed below, the creation of the economic loss doctrine (ELD) in 1989 has greatly impacted common-law claims involving property transactions.

Negligent Misrepresentation

The elements of negligent misrepresentation are: (1) the defendant made a representation of fact; (2) the representation was untrue; (3) the defendant was negligent in making the representation; and (4) the plaintiff believed that the representation was true and relied on it.⁹ Negligence for misrepresentation, like other actions for negligence, requires a duty of care, or a voluntary assumption of duty.

Measurement of Damages

Wisconsin has adopted the "benefit-of-the-bargain" measure of damages for intentional¹⁰ and strict responsibility¹¹ claims. The "benefit-of-the-bargain" gives the difference between the fair market value of the property in the condition when purchased and the fair market value of the property as it was represented.¹² The "out-of-pocket" rule, which gives the difference between what the plaintiff gave as consideration and what the plaintiff actually received, is utilized in cases of negligent misrepresentation.¹³

Economic Loss Doctrine

In 1989, the Supreme Court established the ELD, which requires transacting parties in Wisconsin to pursue only their contractual remedies when asserting an economic loss claim.¹⁴ Its purpose is threefold: (1) to “maintain the fundamental distinction between tort and contract law;” (2) to “protect[] . . . ‘parties’ freedom to allocate economic risk by contract;” and (3) to “encourage[] ‘the party best situated to assess the risk [of] economic loss, the . . . purchaser, to assume, allocate, or insure against that risk.’ ”¹⁵

The ELD bars negligence and strict liability claims arising from consumer goods transactions.¹⁶ The Supreme Court also has considered whether the ELD bars common law claims for intentional misrepresentation that occur “in the context of residential or noncommercial, real estate transactions.”¹⁷ The court concluded that, whether a buyer is a “commercial” or “residential” buyer, the ELD still bars the intentional misrepresentation claim.¹⁸

The Supreme Court has noted in other cases that the ELD does not apply if the contract was for a “service[]” rather than a “product.”¹⁹ Nor does the ELD apply to statutory claims, such as false advertising claims under Wis. Stat. § 100.18 or fraudulent misrepresentation claims under Wis. Stat. § 895.446.²⁰ One may recover “pecuniary” damages, costs, and reasonable attorney fees upon proof of a § 100.18 violation and “actual damages,” all costs of litigation, and exemplary damages upon proof of a § 895.446 violation.²¹

The Supreme Court has recognized exceptions to the ELD.²² First, the ELD “does not bar a commercial purchaser’s claims based on personal injury.”²³ Second, the ELD “does not bar . . . claims based on . . . damage to property other than the product, or economic claims that are alleged in combination with noneconomic losses.”²⁴ Third, the court has recognized a so-called “fraud in the inducement” exception.²⁵

Regarding the first and second exceptions, the ELD merely bars “the recovery of purely economic losses . . . through tort remedies where the only damage is to the product purchased by the consumer.”²⁶ So damage to a person or “other property” is not barred by the ELD.²⁷

The Supreme Court has established a “two part test” to determine whether the other property exception applies.²⁸ First, if the “defective product and the damaged product are part of an ‘integrated system’ ” the exception does not apply.²⁹ “If the product and damaged property are part of such a system, then any damage to that property is considered to be damage to the product itself.”³⁰ Stated otherwise, “once a part becomes integrated into a completed product or system, the entire product or system ceases to be ‘other property’ for purposes of the economic loss doctrine.”³¹ So if the defective product is a “component of an integrated system,” damage to the integrated system is non-compensable.³² Examples of components in integrated systems include: (1) “cement in a concrete paving block;” (2) “a window in house;” (3) “a gear in a printing press,” (4) “a generator connected to a turbine;” and (5) “a drive system in a helicopter.”³³ Second, “[i]f the damaged property and the defective product are not part of an integrated system” courts

apply the “disappointed expectations” test.³⁴ The crux of the test is “whether the purchaser should have foreseen that the product could cause the damage at issue. When claimed damages are merely the result of disappointed expectations of a product’s performance, the exception will not apply and the economic loss doctrine will bar recovery in tort.”³⁵

In 2003, the Supreme Court adopted a “narrow” fraud in the inducement exception to the ELD to promote “honesty, good faith and fair dealing during contract negotiations.”³⁶ The exception applies if the plaintiff establishes three elements: (1) “that the defendant engaged in an intentional misrepresentation;” (2) “that the misrepresentation occurred before the contract was formed;” and (3) “that the alleged misrepresentation was extraneous to the contract.”³⁷ To state the third element differently, the misrepresentation must be “extraneous to, rather than interwoven with, the contract;”³⁸ the misrepresentation “must ‘concern[] matters whose risk and responsibility did not relate to the quality or the characteristics of the goods for which the parties contracted or otherwise involved performance of the contract.’ ”³⁹

Verdict

The verdict should be presented in alternatives if the evidence would permit findings on more than one of the three theories. The instructions on damages must indicate clearly to the jury which measure of damages to apply in connection with each finding.

NOTES:

1. Van Lare v. Vogt, Inc., 2004 WI 110, ¶32, 274 Wis. 2d 631, 683 N.W.2d 46.

2. Malzewski v. Rapkin, 2006 WI App 183, ¶17, 296 Wis. 2d 98, 723 N.W.2d 156
Wisconsin Court System, 2021

3. Id., ¶18. In Malzewski, the buyers waived their right to inspect the home despite the real estate condition report disclosing potential defects. The court found that the Malzewskis' reliance on the condition report was not justified to support a claim for intentional misrepresentation. Id.

4. Id., ¶19.

5. Id., ¶19.

6. Gauerke v. Rozga, 112 Wis. 2d 271, 280, 332 N.W.2d 804 (1983); see also Stevenson v. Barwineck, 8 Wis. 2d 557, 99 N.W.2d 690 (1959).

7. Reda v. Sincaban, 145 Wis. 2d 266, 426 N.W.2d 100 (Ct. App. 1988).

8. Gauerke, 112 Wis. 2d 271; Harweger v. Wilcox, 16 Wis.2d 526, 114 N.W.2d 818 (1962); Neas v. Siemens, 10 Wis.2d 47, 102 N.W.2d 259 (1960); Lee v. Bielefeld, 176 Wis. 225, 186 N.W. 587 (1922); Ohrmundt v. Spiegelhoff, 175 Wis. 214, 184 N.W. 692 (1921); First Nat'l Bank v. Hackett, 159 Wis. 113, 149 N.W. 703 (1914); Arnold v. National Bank of Waupaca, 126 Wis. 362, 105 N.W. 828 (1905); Matteson v. Rice, 116 Wis. 328, 92 N.W. 1109 (1903); Davis v. Nuzum, 72 Wis. 439, 40 N.W. 497 (1888); Bird v. Kleiner, 41 Wis. 134 (1876).

9. Malzewski, 296 Wis. 2d 98, ¶20. A claim based on "negligent misrepresentation inquires whether the buyer was negligent in relying upon the representation." Lambert v. Hein, 218 Wis. 2d 712, 731, 582 N.W.2d 84 (Ct. App. 1998).

10. Anderson v. Tri State Home Improvement Co., 268 Wis. 455, 67 N.W.2d 853 (1954); Chapman v. Zakzaska, 273 Wis. 64, 76 N.W.2d 537 (1956).

11. Harweger v. Wilcox, 16 Wis.2d 526, 114 N.W.2d 818 (1962); Neas, 10 Wis.2d 47; Anderson v. Tri State Home Improvement Co., 268 Wis. 455.

12. See WIS JI-CIVIL 2405.

13. Gyldenvand v. Schroeder, 90 Wis. 2d 690, 280 N.W.2d 235 (1979).

14. Hinrichs v. DOW Chemical Co., 2020 WI 2, ¶29, 389 Wis. 2d 669, 937 N.W.2d 37 (citing Sunnyslope Grading, Inc. v. Miller, Bradford & Risberg, Inc., 148 Wis. 2d 910, 437 N.W.2d 213 (1989)).

15. Id., ¶29 (quoting Van Lare v. Vogt, Inc., 2004 WI 110, ¶17, 274 Wis. 2d 631, 683 N.W.2d 46) (third modification in the original).

16. State Farm Mutl. Auto Ins. V. Ford Motor Co., 225 Wis. 2d 305, 592 N.W.2d 201 (1999).

17. Below v. Norton, 2008 WI 77, ¶20, 310 Wis. 2d 713, 751 N.W.2d 351 (2008).

18. Id., ¶23.

19. See 1325 N. Van Buren, LLC v. T-3 Grp., Ltd., 2006 WI 94, 293 Wis. 2d 410, 716 N.W.2d 822; Linden v. Cascade Stone Co., 2005 WI 113, 283 Wis. 2d 60, 699 N.W.2d 189; Ins. Co. of N. Am. v. Cease Elec. Inc., 2004 WI 139, 276 Wis. 2d 361, 688 N.W.2d 462.

20. Hinrichs, 389 Wis. 2d 669, ¶55; Ferris v. Location 3 Corp., 2011 WI App 134, ¶12, 337 Wis. 2d 155, 804 N.W.2d 822.

21. See Wis JI—Civil 2418 & 2419.

22. Hinrichs, 389 Wis. 2d 669, ¶32 (citing John J. Laubmeier, Demystifying Wisconsin's Economic Loss Doctrine, 2005 Wis. L. Rev. 225, 228).

23. Id., ¶40 (quoting Daanen & Janssen, Inc. v. Cedarapids, Inc., 216 Wis. 2d 395, 402, 573 N.W.2d 842 (1998)).

24. Id., (quoting Daanen & Janssen, Inc., 216 Wis. 2d at 402).

25. See generally id.

26. Hinrichs, 389 Wis. 2d 669, ¶40 (quoting State Farm Fire & Cas. Co. v. Hague Quality Water, Int'l., 2013 WI App 10, ¶6, 345 Wis. 2d 741, 826 N.W.2d 412).

27. Id., ¶40–41.

28. Id.

29. Id.

30. Id.

31. Id. (quoting Selzer v. Brunzell Bros., Ltd., 2002 WI App 232, ¶38, 257 Wis. 2d 809, 652 N.W.2d 806).

32. Id., ¶46.

33. Id.

34. Id., ¶41.

35. Id.

36. Digicorp, Inc. v. Ameritech Corp., 2003 WI 54, ¶34, 262 Wis. 2d 32, 662 N.W.2d 652.

37. Hinrichs, 389 Wis. 2d 669, ¶35.

38. Id., ¶35 (quoting Kaloti Enterprises v. Kellogg Sales Co., 2005 WI 111, ¶42, 283 Wis. 2d 555, 699 N.W.2d 205).

39. Id. (quoting Kaloti, 283 Wis. 2d 555, ¶42) (modifications in the original).

COMMENT

This Law Note was approved in 2018. The comment was revised in 2021.

2418 UNFAIR TRADE PRACTICE: UNTRUE, DECEPTIVE, OR MISLEADING REPRESENTATION: WIS. STAT. § 100.18(1)

To constitute an untrue, deceptive, or misleading representation in this case, there are three elements which must be proved by (plaintiff).

First, (defendant) made, published, or placed before one or more members of the public an advertisement, announcement, statement, or representation concerning the (sale) (hire) (use) (lease) (distribution) of _____ [Note: indicate nature of the sales promotion]. An advertisement, announcement, statement, or representation can be oral or written. It can appear in a newspaper, magazine, or other publication or it can be made by telephone or over radio or television. It may take the form of a notice, handbill, circular, pamphlet, letter, or any other means of (publishing) (disseminating) (circulating) it. [It may also take the form of a face-to-face communication.]

Second, the advertisement or announcement contained a(n) (assertion) (representation) (statement) that was untrue, deceptive, or misleading. A(n) (assertion) (representation) (statement) is untrue if it is false, erroneous, or does not state or represent things as they are. A(n) (assertion) (representation) (statement) is deceptive or misleading if it causes a reader or listener to believe something other than what is in fact true or leads to a wrong belief. The (assertion) (representation) (statement) need not be made with knowledge as to its falsity or with an intent to defraud or deceive so long as it was made with the intent to (sell) (distribute) the _____ [product or item] or with the intent to induce the (purchase) (use) of the _____ [product or item].

Third, (plaintiff) sustained a monetary loss as a result of the (assertion) (representation) (statement). In determining whether (plaintiff)'s loss was caused by the (assertion) (representation) (statement), the test is whether (plaintiff) would have acted in its absence. Although the (assertion) (representation) (statement) need not be the sole or only motivation for (plaintiff)'s decision to (buy) (rent) (use) the _____ [product or item], it must have been a material inducement. That is, the (assertion) (representation) (statement) must have been a significant factor contributing to (plaintiff)'s decision. [You may consider the reasonableness of (plaintiff)'s reliance on the (assertion) (representation) (statement) by (defendant) in determining whether the (assertion) (representation) (statement) materially induced (plaintiff) to sustain a monetary loss.]

(Give Wis JI-Civil 200.)

COMMENT

This instruction and comment were approved in 1998. The instruction was revised in 2009. The comment was updated in 2001, 2004, 2008, 2009, 2014, 2016, 2017, and 2021. A reporter's note was removed in 2014.

Elements. There are three elements to a § 100.18 claim: (1) the defendant made a representation to the public with the intent to induce an obligation, (2) the representation was "untrue, deceptive or misleading," and (3) the representation materially induced (caused) a pecuniary loss to the plaintiff. K&S Tool & Die Corp. v. Perfection Mach. Sales, Inc., 2007 WI 70, 301 Wis.2d 109, 732 N.W.2d 792 & 49.

Reliance; Cause. In Novell v. Migliaccio, 2008 WI 44, 309 Wis.2d 132, 749 N.W.2d 544, the supreme court held that a plaintiff is not required to prove reasonable reliance as an element of a § 100.18 claim. However, the court said Reasonableness of a plaintiff's reliance may be relevant in considering whether the misrepresentation materially induced (caused) the plaintiff to sustain a loss. See also K&S Tool & Die Corp. v. Perfection Mach. Sales, Inc., 2007 WI 70, 301 Wis.2d 109, 732 N.W.2d 792.

In K&S Tool & Die Corp., the court contrasted § 100.18 claims with common law misrepresentation claims and concluded that unlike common law causes of action for misrepresentation, reasonable reliance is not the standard for a § 100.18 claim because the legislature created a distinct cause of action.

The reasonableness of a person's actions in relying on representations is a "defense" and may be considered by a jury in determining cause. Novell, *supra*, ¶49. A jury may consider the reasonableness of a person's reliance on a representation in determining whether there had been a material inducement. Novell, *supra*, ¶ 50; K & S Tool & Die, *supra*, ¶36.

Economic Loss Doctrine. In Below v. Norton, 2008 WI 77, 310 Wis.2d 713, 751 N.W.2d 351, the supreme court held that the economic loss doctrine bars common law claims for "intentional misrepresentation" in residential real estate transactions. It also held that a plaintiff in such a transaction would still have "statutory and contractual remedies," noting in particular that the plaintiffs § 100.18 claim was still viable because it had been remanded to the trial court. See also Hinrichs v. DOW Chemical Co., 2020 WI 2, ¶6, 389 Wis. 2d 669, 937 N.W.2d 37 (concluding "that the economic loss doctrine does not serve as a bar to claims made under Wis. Stat. § 100.18").

Burden of Proof Under Wis. Stat. § 100.20 (5). In Benkoski v. Flood, 2001 WI App 84, ¶17, 242 Wis.2d 652, 626 N.W.2d 851, the court said the application of the ordinary civil burden of proof fosters the remedial purposes and policies underlying § 100.20(5).

Pecuniary Loss in Wis. Stat. § 100.20(5). The court of appeals has said that the "pecuniary loss" concept set out in Wis. Stat. § 100.20(5) is similar to the concept explained in JI-Civil 3735, Damages: Loss of Expectation. Benkoski v. Flood, 2001 WI App 84, ¶32, 242 Wis.2d 652, 626 N.W.2d 851. See also Mueller v. Harry Kaufmann Motorcars, Inc., 2015 WI App 8, 359 Wis.2d 597, 859 N.W.2d 451, where the court of appeals discusses this instruction.

Silence. A non-disclosure does not constitute an "assertion, representation or statement of fact" under Wis. Stat. § 100.18(1). Tietsworth v. Harley-Davidson, Inc., 2004 WI 32, 270 Wis.2d 146, 677 N.W.2d 233, ¶4, 39, and 40. Silence is insufficient to support a claim.

Members of the Public. When there is an issue whether the plaintiff was a "member of the public" under § 100.18, see K & S Tool & Die Corp., 2007 WI 70, 301 Wis.2d 109, 732 N.W.2d 792 and State v. Automatic Merchandisers of America, Inc., 64 Wis.2d 659, 221 N.W.2d 683 (1974). Whether the plaintiff is a member of the public presents a question of fact. K & S Tool & Die Corp., *supra*. See also Hinrichs v. DOW Chemical Co., 2020 WI 2, ¶¶64–71, 389 Wis. 2d 669, 937 N.W.2d 37 (declining to overrule Automatic Merchandisers and noting cases subsequent to Automatic Merchandisers "consistently and coherently followed it").

Puffery. See United Concrete & Construction v. Red-D-Mix Concrete, Inc., 2013 WI 72, 833 N.W.2d 714.

Advertisements. The court of appeals has held that the plain language of Wis. Stat. § 100.18 "shows that statements or representations may be actionable even when contained in bills or other documents not traditionally considered 'advertisements.'" MBS-Certified Public Accountants, LLC v. Wisconsin Bell, Inc., 2013 WI App 14, 346 Wis.2d 173, 828 N.W.2d 575. Applying this holding to the facts of the case, the court concluded that phone bills and representations in the bills that induced the plaintiff to pay for services it did not authorize are among the kind of misleading representations that Wis. Stat. § 100.18 prohibits.

Voluntary Payment Doctrine. The court in MBS, *supra*, also held that the voluntary payment doctrine does not apply to claims under Wis. Stat. § 100.18, 100.207, or the Wisconsin Organized Crime Control Act (Wis. Stat. §§ 946.80-946.88).

Under the common law voluntary payment doctrine, a party cannot bring an action to recover payments that were paid voluntarily with full knowledge of the material facts, and absent fraud or wrongful conduct inducing payment. See MBS-Certified Public Accountants, LLC v. Wisconsin Bell, Inc., 2012 WI 15, 338 Wis.2d 647, 809 N.W.2d 857.

Rescission. In 2014, the court of appeals held that Wis. Stat. § 100.18 permits plaintiffs, in some instances, to recover a refund of the purchase price. However, the statute which permits recovery only for "pecuniary loss," does not permit rescission as a remedy. A plaintiff can receive rescission as a remedy for intentional misrepresentation when the misrepresentation is material. Mueller v. Harry Kaufmann Motorcars, Inc., 2015 WI App 8, 359 Wis.2d 597, 859 N.W.2d 451; see Wis JI-Civil 2405.

As-Is Clause. In Fricano v. Bank of America, 2016 WI App 11, 366 Wis.2d 748, 875 N.W.2d 143, the court said an "as is" and exculpatory clauses in the parties' contract did not relieve the bank/seller of liability under Wis. Stat. § 100.18 for its deceptive representation in the contract which induced agreement to such terms. The trial court in Fricano, instructed the jury on the "as is" clause as follows:

An 'as is' clause does not relieve the defendant, Bank of America, from a duty to disclose a material adverse fact about the property.

The buyer still has the burden of proof to prove that Bank of America had knowledge of the condition of the property and failed to disclose it. The buyer is entitled to rely upon a statement by the defendant, Bank of America, that it has no knowledge about the property. Bank of America may not use an as-is clause to relieve the bank of its responsibility to disclose conditions about the condition of the property. In these situations, the exculpatory clause still may have evidentiary value for the purpose of showing that no representations were relied upon.



WISCONSIN JURY INSTRUCTIONS

CIVIL

VOLUME III

Wisconsin Civil Jury
Instructions Committee

- Release No. 52

WIS JI-CIVIL

TABLE OF CONTENTS

VOLUME III

CONTRACTS (Continued)

Insurance

- 3100 Insurance Contract: Misrepresentation or Breach of Affirmative
Warranty by the Insured (1998)
- 3105 Insurance Contract: Failure of Condition or Breach of Promissory
Warranty (1994)
- 3110 Insurance Contract: Definition of "Resident" or "Member of a Household" (2013)
- 3112 Owner's Permission for Use of Automobile (1993)
- 3115 Failure of Insured to Cooperate (2016)
- 3116 Failure to Cooperate: Materiality (2016)
- 3117 Failure to Give Notice to Insurer (1994)
- 3118 Failure to Give Notice to Insurer: Materiality (2002)

Breach of Warranty

- 3200 Products Liability: Law Note (2021)
- 3201 Implied Warranty: Merchantability Defined (2009)
- 3202 Implied Warranty: Fitness for Particular Purpose (1994)
- 3203 Implied Warranty: By Reason of Course of Dealing or Usage of Trade (1994)
- 3204 Implied Warranty: Sale of Food (1994)
- 3205 Implied Warranty: Exclusion or Modification (2009)
- 3206 Implied Warranty: Exclusion by Reason of Course of Dealing or
Usage of Trade (1994)
- 3207 Implied Warranty: Use of Product after the Defect Known (2009)
- 3208 Implied Warranty: Failure to Examine Product (2009)
- 3209 Implied Warranty: Susceptibility or Allergy of User (2009)
- 3210 Implied Warranty: Improper Use (1994)

- 3211 Implied Warranty: Notice of Breach (1993)
- 3220 Express Warranty: General (1994)
- 3222 Express Warranty: No Duty of Inspection (1994)
- 3225 Express Warranty: Statement of Opinion (1994)
- 3230 Express Warranty under the Uniform Commercial Code (1994)

Duties of Manufacturers and Sellers

- 3240 Negligence: Duty of Manufacturer (2007)
- 3242 Negligence: Duty of Manufacturer (Supplier) to Warn (2020)
- 3244 Negligence: Duty of Manufacturer (Seller) to Give Adequate
Instructions as to Use of a Complicated Machine (Product) (1994)
- 3246 Negligence: Duty of Manufacturer (Seller) Who Undertakes to Give
Instruction as to the Use of a Machine (Product) (1994)
- 3248 Negligence: Duty of Restaurant Operator in Sale of Food Containing
Harmful Natural Ingredients (1994)
- 3250 Negligence: Duty of Seller: Installing (Servicing) Product (1994)
- 3254 Duty of Buyer or Consumer: Contributory Negligence (2015)
- 3260 Strict Liability: Duty of Manufacturer to Ultimate User (For Actions
Commenced
Before February 1, 2011) (2014)
- 3260.1 Product Liability: Wis. Stat. § 895.047 (For Actions Commenced after January
31, 2011) (2014)
- 3262 Strict Liability: Duty of Manufacturer (Supplier) to Warn
(For Actions Commenced Before February 1, 2011) (2014)
- 3264 Strict Liability: Definition of Business (1994)
- 3268 Strict Liability: Contributory Negligence (2015)
- 3290 Strict Products Liability: Special Verdict (For Actions Commenced Before
February 1, 2011) (2014)
- 3290.1 Product Liability: Wis. Stat. § 895.047: Verdict (For Actions Commenced after
January 31, 2011) (2014)
- 3294 Risk Contribution: Negligence: Verdict (For Actions Commenced Before
February 1, 2011) (2014)
- 3295 Risk Contribution: Negligence Claim (For Actions Commenced Before February
1, 2011) (2014)
- 3296 Risk Contribution: Negligence: Verdict (Wis. Stat. § 895.046) (For Actions
Commenced after January 31, 2011) (2014)

Lemon Law

- 3300 Lemon Law Claim: Special Verdict (2016)
- 3301 Lemon Law Claim: Nonconformity (2001)
- 3302 Lemon Law Claim: Four Attempts to Repair: Same Nonconformity (1999)
- 3303 Lemon Law Claim: Out of Service Warranty Nonconformity
(Warranty on or after March 1, 2014) (2016)
- 3304 Lemon Law Claim: Failure to Repair (Relating to Special Verdict
Question 6) (2006)
- 3310 Magnuson–Moss Claim (2020)

Damages

- 3700 Damages: Building Contracts: Measure of Damages (2012)
- 3710 Consequential Damages for Breach of Contract (2018)
- 3720 Damages: Incidental (1994)
- 3725 Damages: Future Profits (2008)
- 3735 Damages: Loss of Expectation (1994)
- 3740 Damages: Termination of Real Estate Listing Contract (Exclusive) by
Seller; Broker's Recovery (1994)
- 3750 Damages: Breach of Contract by Purchaser (1994)
- 3755 Damages: Breach of Contract by Seller (1994)
- 3760 Damages: Attorney Fees (1994)

AGENCY; EMPLOYMENT; BUSINESS ORGANIZATION

- 4000 Agency: Definition (2019)
- 4001 General Agent: Definition (1994)
- 4002 Special Agent: Definition (1994)
- 4005 Agency: Apparent Authority (1994)
- 4010 Agency: Implied Authority (1994)
- 4015 Agency: Ratification (1994)
- 4020 Agent's Duties Owed to Principal (1994)
- 4025 Agency: Without Compensation (2005)
- 4027 Agency: Termination: General (1994)
- 4028 Agency: Termination: Notice to Third Parties (1994)
- 4030 Servant: Definition (2015)
- 4035 Servant: Scope of Employment (2020)

CONTENTS

WIS JI-CIVIL

CONTENTS

- 4040 Servant: Scope of Employment; Going to and from Place of Employment (2014)
- 4045 Servant: Scope of Employment While Traveling (2020)
- 4050 Servant: Master's Ratification of Wrongful Acts Done Outside Scope of Employment (1994)
- 4055 Servant: Vicarious Liability of Employer (2005)
- 4060 Independent Contractor: Definition (2005)
- 4080 Partnership (2009)

PERSONS

- 5001 Paternity: Child of Unmarried Woman (2021)
- 7030 Child in Need of Protection or Services (2014)
- 7039 Involuntary Termination of Parental Rights: Child in Need of Protection or Services: Preliminary Instruction (2014)
- 7040 Involuntary Termination of Parental Rights: Continuing Need of Protection or Services (2014)
- 7042 Involuntary Termination of Parental Rights: Abandonment under Wis. Stat. § 48.415(1)(a) 2 or 3 (2014)
- 7050 Involuntary Commitment: Mentally Ill (2020)
- 7054 Petition for Guardianship of the Person: Incompetency; Wis. Stat. § 54.10(3)(a)2 (2019)
- 7055 Petition for Guardianship of the Estate: Incompetency; Wis. Stat. § 54.10(3)(a)3 (2009)
- 7056 Petition for Guardianship of the Estate: Spendthrift; Wis. Stat. § 54.10(2) (2009)
- 7060 Petition for Guardianship of Incompetent Person and Application for Protective Placement; Wis. Stat. § 54.10 and 55.08(1) (2019)
- 7061 Petition for Guardianship of Incompetent Person and Application for Protective Services; Wis. Stat. § 54.10 and 55.08(2) (2014)
- 7070 Involuntary Commitment: Habitual Lack of Self-Control as to the Use of Alcohol Beverages (2003)

PROPERTY

General

- 8012 Trespasser: Definition (2013)

- 8015 Consent of Possessor to Another's Being on Premises (2013)
- 8017 Duty of Hotelkeeper to Furnish Reasonably Safe Premises and Furniture for Guests (Renumbered JI-Civil 8051) (1994)
- 8020 Duty of Owner or Possessor of Real Property to Nontrespasser User (2020)
- 8025 Trespass: Owner's Duty to Trespasser; Duty to Child Trespasser (Attractive Nuisance) (2016)
- 8026 Trespass: Special Verdict (2016)
- 8027 Trespass: Child Trespasser (Attractive Nuisance): Special Verdict (2013)
- 8030 Duty of Owner of a Building Abutting on a Public Highway (2006)
- 8035 Highway or Sidewalk Defect or Insufficiency (2021)
- 8040 Duty of Owner of Place of Amusement: Common Law (1994)
- 8045 Duty of a Proprietor of a Place of Business to Protect a Patron from Injury Caused by Act of Third Person (2012)
- 8050 Duty of Hotel Innkeeper: Providing Security (1994)
- 8051 Duty of Hotelkeeper to Furnish Reasonably Safe Premises and Furniture for Guests (2020)
- 8060 Adverse Possession Not Founded on Written Instrument (Wis. Stat. § 893.25) (2018)

Eminent Domain

- 8100 Eminent Domain: Fair Market Value (Total Taking) (2020)
- 8101 Eminent Domain: Fair Market Value (Partial Taking) (2012)
- 8102 Eminent Domain: Severance Damages (2008)
- 8103 Eminent Domain: Severance Damages: Cost-To-Cure (2007)
- 8104 Eminent Domain: Unity of Use - Two or More Parcels (2007)
- 8105 Eminent Domain: Lands Containing Marketable Materials (2008)
- 8107 Eminent Domain: Severance Damages; Unity of Use (2008)
- 8110 Eminent Domain: Change in Grade (2008)
- 8111 Eminent Domain: Access Rights (2020)
- 8112 Eminent Domain: Air Rights (2007)
- 8115 Eminent Domain: Special Benefits (2008)
- 8120 Eminent Domain: Comparable Sales Approach (2008)
- 8125 Eminent Domain: Inconvenience to Landowner [Withdrawn 2008]
- 8130 Eminent Domain: Income Approach (2008)
- 8135 Eminent Domain: Cost Approach (2008)
- 8140 Eminent Domain: Legal Nonconforming Use, Lot or Structure (Definitions) (2007)

8145 Eminent Domain: Assemblage (2007)

Table of Cases Cited (2021)

Index (2021)

3200 PRODUCTS LIABILITY: LAW NOTE

Products liability falls into three categories: (1) breach of warranty (expressed or implied); (2) common law negligence; and (3) strict liability in tort.

In each of the above theories, it is necessary to establish that: (a) the product was defective; (b) the defect existed at the time the manufacturer or seller relinquished control; (c) the injury resulted from the use of the product.

1. Breach of Warranty

A claim for breach of warranty ordinarily depends upon a contractual relationship between the parties. The doctrine of privity of contract is essential to a breach of warranty claim.¹

The requirement as to privity of contract does not apply to members of the buyer's family or guests in the buyer's home, both of whom may take advantage of any warranty existing between the buyer and the seller if it is reasonable to expect that the person may use, consume, or be affected by the goods, and that person is injured by the breach of the warranty, expressed or implied.²

There may exist both an express warranty and implied warranty in the same sale.³

The most significant implied warranties relate to merchantability and fitness for intended purpose.⁴

Two provisions of the Uniform Commercial Code under Ch. 402 of the Wisconsin Statutes present difficulty for the consumer or user who is injured by the defective product, namely: (1) the requirement that the defendant be given notice of the breach of warranty

within a reasonable period of time, and (2) disclaimer which allows the seller to disclaim all warranties, including warranty of merchantability, by giving an appropriate notice.⁵

Notice of breach of warranty within a reasonable time is a condition precedent to liability.⁶ The notice need not be in any particular form (written or oral), but it must fairly inform the seller of the breach of warranty and that the buyer will look to the seller for damages.⁷ The notice requirement applies to both expressed and implied warranties.⁸

Although the question of timeliness of notice is usually one of fact for the jury, an unreasonable delay may be determined as a matter of law.⁹ Knowledge by the seller of the facts which give rise to breach of warranty does not relieve the buyer of the requirement to give notice.¹⁰

Under proper circumstances, a seller may be held to have waived the statutory requirement of notice of breach of warranty and may also be held to be estopped from asserting want of notice by the buyer, but waiver and estoppel must be pleaded by the buyer.¹¹

The seller may disclaim a warranty either orally or in writing.¹² A written disclaimer must be sufficiently conspicuous so as to charge the buyer with knowledge of it, and this question is for the court.¹³

Disclaimers which are contrary to public policy or contrary to statute are void.¹⁴ An "as is" disclaimer negates any implied warranty of fitness for a particular purpose.¹⁵

The product, as warranted, must be used for its intended purpose. When the buyer misuses, alters the product, or uses it for a purpose other than its intended use, warranty does not apply.¹⁶

2. Negligence

Privity. The privity of contract rule is inapplicable to actions predicated upon common law negligence.¹⁷

Duty. The duty of a manufacturer or supplier of a product is to exercise ordinary care to insure that the product will not create an unreasonable risk of injury or damage to the user or owner when used in its intended or foreseeable manner.¹⁸ This duty must be "approached from the standpoint of the standard of care to be exercised by the reasonably prudent person in the shoes of the defendant manufacturer or supplier."¹⁹ A manufacturer, among other requirements, is required to exercise ordinary care in the manufacture of its product in the following respects: (1) safe design of the product so that it will be fit for its intended or foreseeable purpose; (2) construction of the product so that the materials and workmanship furnished will render the product safe for its intended or foreseeable use; (3) adequate inspections and tests to determine the extent of defects both as to materials and workmanship; (4) adequate warnings of danger in the use of the product and adequate instructions as to the proper use of the product which is dangerous when used as intended.²⁰

Warnings and Instructions. A warning or instruction, when required, must be reasonably calculated to reach and be understood by those likely to use the product. The warning must be sufficient to inform the average user of the nature and extent of the danger which he or she may encounter in the use of the product.²¹

Before a seller can be held responsible for failure to warn, the seller must have actual or constructive notice of the dangers of the product.²² Where a seller undertakes to give instructions as to the proper use of a product, the seller assumes the duty of adequate instructions and to calling attention to dangers to be avoided.²³

Res Ipsa Loquitur. The plaintiff may invoke the doctrine of res ipsa loquitur. The following elements must concur before res ipsa loquitur will be invoked: (1) the accident must be of a kind which ordinarily does not occur in the absence of someone's negligence; (2) it must be caused by the agency or instrumentality within the exclusive control of the defendant; and (3) it must not have been due to the contributory negligence of the plaintiff.²⁴ The contributory negligence referred to in element (3), as to res ipsa loquitur, does not bar recovery since Wisconsin adheres to the comparative negligence rule.²⁵ In applying the res ipsa loquitur doctrine, the right to control is the important factor and actual control is not necessary.²⁶ Where the product has been subject to misuse and abuse by the user, the doctrine of res ipsa loquitur may not apply.²⁷ This doctrine has been applied in two exploding bottle cases.²⁸

Contributory Negligence. Contributory negligence is a defense in products liability actions predicated upon common law negligence. The buyer has a duty to use ordinary care for his own safety and protection.

Defenses. The following conduct on the part of the plaintiff may constitute defenses to an action based on a defective product: (1) negligent failure to discover the defective condition; (2) use of the product after discovery of the defect; and (3) use of the product in a manner that could not have been reasonably foreseen by the manufacturer.²⁹

Statutory Violations. Generally, when a statute is designated to protect a certain class of persons from a particular hazard, and the statute sets up a standard of conduct, the violation of such statute constitutes negligence as a matter of law or at least is evidence of negligence.³⁰

Generally, a violation of a criminal statute constitutes negligence per se.³¹

3. **Strict Product Liability** (Common Law; Before 2011 Wisconsin Act 2, effective for actions that are commenced on or after February 1, 2011)

The law of strict product liability was substantially altered in 2011 with the enactment of 2011 Wisconsin Act 2. This section covers the common law of strict liability that existed prior to the enactment of 2011 Wisconsin Act 2. For a summary of the changes to strict products liability law in Wisconsin made by the new legislation, see the comment to Wis JI-Civil 3260.1.

Strict liability applies not only to the manufacturer but also to the distributor, wholesaler, and retailer.³² The concept of strict tort liability may be misleading. Strict tort liability does not make the manufacturer or seller an insurer, nor does it impose absolute liability. Rather, it relieves the injured "user" from proving specific acts of negligence and protects him or her from the contractual defenses of notice of breach, disclaimer, and lack of privity.³³

Elements. The following elements must be proved to warrant recovery under the doctrine of strict liability in tort: (1) that the product was in a defective condition unreasonably dangerous; (2) that the product was defective when it left the possession or control of the seller; (3) that the defect was a cause (substantial factor) of the plaintiff's injury; (4) that the seller was engaged in the business of selling such products (it does not apply to an isolated or infrequent sale); and (5) that the product was one which the seller expected to and did reach the consumer without substantial change.

The term "seller" includes restaurateur, manufacturer, distributor, wholesaler, and retailer.³⁴ One who represents a product to be his or her own is subject to the same liability as if he or she was the manufacturer.³⁵ A product is unreasonably dangerous when it is

dangerous beyond that contemplated by the ordinary user who purchases it with the ordinary knowledge common to the community as to its characteristics.³⁶

A defective product is one which, when sold by a seller, is in a condition not contemplated by the ordinary consumer which is unreasonably dangerous.³⁷ A product may be defective by reason of manufacturer or design. A failure to give adequate directions or warnings may likewise constitute a "defective" condition.³⁸

Where an adequate warning is given, the seller may reasonably assume that it would be read and heeded; a product bearing such warning, which would be safe for use if followed, is not in a defective condition nor is it unreasonably dangerous.³⁹

The mere showing of product malfunction evidences a defective condition.⁴⁰

A seller cannot immunize himself against liability under strict tort liability theory by inserting an exculpatory clause in the sales contract as he or she may do with respect to negligence and warranty.⁴¹

Defenses. The liability under the strict tort liability theory is subject to the defense of contributory negligence. Some of the defenses of contributory negligence: (1) failure to use the product for the intended purpose; (2) abuse or alteration of the product; and (3) use of the product where its intended use is coupled with inherent danger. The mere failure of the user of the product to discover a defect or guard against the possibility of a defect does not render the user of the product contributorily negligent.⁴² A user may be contributorily negligent if he or she voluntarily exposes himself or herself to a known danger.⁴³

4. Strict Product Liability (Wis. Stat. § 895.045(3), 895.046, and 895.047, (Effective for Actions Commenced On or After February 1, 2011))

The law controlling product claims based on strict liability was substantially altered by the legislature in 2011 with the enactment of 2011 Wisconsin Act 2. The act's provisions are effective for actions commenced after January 31, 2011.

Section 895.047(1)(a) specifies three ways in which a product may be defective: a manufacturing defect, design defect or an inadequate instructions/warnings defect. Each of these are defined in the Act. The definitions are taken from the Restatement (Third) of Torts: Products Liability, sec. 2. Strict liability is retained for manufacturing defects, while design and inadequate instructions/warnings defects use the negligence concept of "foreseeable risks of harm." For a summary of the changes to products liability contained in this Act, see the comment to Wis JI-Civil 3260.1.

Section 985.047(2) codifies the common law principle that a "seller or distributor," i.e., an entity other than the manufacturer—can be strictly liable under limited circumstances.⁴⁴ A federal district court, interpreting Section 985.047(2), concluded that if an entity served "the traditional functions of both retail seller and wholesale distributor," it was a "seller or distributor" regardless of whether it ever owned the product.⁴⁵ A seller or distributor is not strictly liable "unless the manufacturer would be liable under sub. (1)," and the seller or distributor undertook the manufacturer's duties, the manufacturer is unavailable for service of process within Wisconsin, or the manufacturer is judgment proof.⁴⁶

COMMENT

This law note was approved by the Committee in 1971. It was updated in 2001, 2011, and 2021.

FOOTNOTES

1. Dippel v. Sciano, 37 Wis.2d 443, 155 N.W.2d 55 (1967); Strahlendorf v. Walgreen Co., 16 Wis.2d 421, 114 N.W.2d 326 (1962); Smith v. Atco Co., 6 Wis.2d 371, 94 N.W.2d 697 (1959); Kennedy-Ingalls Corp. v. Meissner, 11 Wis.2d 371, 105 N.W.2d 696 (1960); Cohan v. Associated Fur Farms, Inc., 261 Wis. 584, 53 N.W.2d 788 (1952); Prinsen v. Russos, 194 Wis. 142, 215 N.W. 905 (1927); Barlow v. DeVilbiss Co., 214 F. Supp. 540 (E.D. Wis. 1963).

2. Wis. Stat. § 402.318. Express warranty is defined in Wis. Stat. § 402.313. Implied warranty is defined in Wis.2d 402.314.

3. Hellenbrand v. Bowar, 16 Wis.2d 264, 114 N.W.2d 418 (1962).

4. Wis. Stat. §§ 402.314 and 402.315; Calumet Cheese Co. v. Chas. Pfizer & Co., 25 Wis.2d 55, 130 N.W.2d 290 (1964); Hellenbrand v. Bowar, *supra* note 3; Kennedy-Ingalls Corp. v. Meissner, *supra* note 1; Betehia v. Cape Cod Corp., 10 Wis.2d 232, 103 N.W.2d 64 (1960).

5. Wis. Stat. § 402.316.

6. Marsh Wood Products Co. v. Babcock & Wilcox Co., 207 Wis. 209, 240 N.W. 392 (1932).

7. Wis. Stat. § 402.607; Wojciuk v. United States Rubber Co., 13 Wis.2d 173, 108 N.W.2d 1949 (1961); Mack Trucks, Inc. v. Sunde, 19 Wis.2d 129, 119 N.W.2d 321 (1963); Hellenbrand v. Bowar, *supra* note 3; Kennedy-Ingalls Corp. v. Meissner, *supra* note 1.

8. Tews v. Marg, 246 Wis. 245, 16 N.W.2d 795 (1944).

9. Schaefer v. Weber, 265 Wis. 160, 60 N.W.2d 696 (1953) (delay of 5 months); Lumbermen's Mut. Cas. Co. v. S. Morgan Smith Co., 251 Wis. 218, 28 N.W.2d 343 (1947) (delay of 10 months); Wood v. Hoyer, 179 Wis. 628, 192 N.W. 689 (1923) (delay of 8 months); Tegen v. Chapin, 176 Wis. 410, 187 N.W. 185 (1922) (delay of 57 days).

10. Hellenbrand v. Bowar, *supra* note 3.

11. Mack Trucks, Inc. v. Sunde, *supra* note 7.

12. Wis. Stat. § 402.316.

13. Wis. Stat. § 401.201(10); Calumet Cheese Co. v. Chas. Pfizer & Co., *supra* note 4.

14. Metz v. Medford Fur Foods, 4 Wis.2d 96, 90 N.W.2d 106 (1958).

15. Hyland v. G.C.A. Tractor & Equip. Co., 274 Wis. 586, 80 N.W.2d 771 (1957); Wis. Stat. § 402.316(3)(a).

16. 1 Hursh, American Law of Products Liability § 3:10 (1961); Crown v. General Motors Corp., 355 F.2d 814 (4th Cir. 1966); Strahlendorf v. Walgreen Co., *supra* note 1; Prosser, Law of Torts (3d) 656 (1964).

17. Smith v. Atco Co., supra note 1.
18. Smith v. Atco Co., supra note 1; Restatement, Second, Torts § 395 (1965); Prosser, supra note 16, at 648-650.
19. Smith v. Atco Co., supra note 1.
20. Schwalbach v. Antigo Elec. & Gas Co., 27 Wis.2d 651, 135 N.W.2d 263 (1965); Smith v. Atco Co., 266 Wis. 630, 64 N.W.2d 226 (1954); Marsh Wood Products Co. v. Babcock & Wilcox Co., supra note 6; Flies v. Fox Bros. Buick Co., 196 Wis. 196, 218 N.W. 855 (1928); 1 Frumer and Friedman, Products Liability § 6.8 (1966); Restatement, Second, Torts § 395 (1965); 6 A.L.R.3d 91 (1966).
21. Harper and James, 2 Law of Torts § 28.7 at 1548-1549 (1956).
22. Strahlendorf v. Walgreen Co., supra note 1; Restatement, supra note 20, § 401 at 339 (1965).
23. Karsteadt v. Phillip Gross H. & S. Co., 179 Wis. 110, 190 N.W. 844 (1922).
24. Turk v. H. C. Prange Co., 18 Wis.2d 547, 119 N.W.2d 365 (1963); Ryan v. Zweck-Wollenberg Co., supra note 20.
25. Turk v. H. C. Prange Co., supra note 24.
26. Id.
27. Wojciuk v. United States Rubber Co., supra note 7.
28. Weggeman v. Seven-Up Bottling Co., 5 Wis.2d 503, 93 N.W.2d 467 (1958); Zarling v. LaSalle Coca-Cola Bottling Co., 2 Wis.2d 596, 87 N.W.2d 263 (1958).
29. Yaun v. Allis-Chalmers Mfg. Co., 253 Wis. 558, 34 N.W.2d 853 (1948); 38 Am. Jur. Negligence §§ 181, 182, 184, 188, 190, 191 (1941 and pocket part).
30. Note, Products Liability Based on Violation of Statutory Standards, 64 Mich. L. Rev. 1388 (1966); Prosser, supra note 16, § 35 at 202.
31. Perry Creek C. Corp. v. Hopkins Ag. Chem. Co., 29 Wis.2d 429, 139 N.W.2d 96 (1966); Arndt Brothers Minkery v. Medford Fur Foods, 274 Wis. 627, 80 N.W.2d 776 (1957); McAleavy v. Lowe, 259 Wis. 463, 49 N.W.2d 487 (1951); Pizzo v. Wiemann, 149 Wis. 235, 134 N.W. 899 (1912).
32. 13 A.L.R.3d 1057, 1096-1100 (1967).
33. Dippel v. Sciano, supra note 1.
34. Restatement, Second, Torts § 402A, Comment f at 350 (1965).
35. Wojciuk v. United States Rubber Co., supra note 7.

36. Restatement, supra note 34, Comment i at 352.
37. Green v. Smith & Nephew AHP, Inc., 2001 WI 109, 245 Wis.2d 772, 629 N.W.2d 727.
38. Id., Canifax v. Hercules Powder Co., 237 Cal. App.2d 44, 46 Cal. Rptr. 552 (1965); Crane v. Sears Roebuck & Co., 218 Cal. App.2d 855, 32 Cal. Rptr. 754 (1963).
39. Restatement, supra note 34, Comment j at 353; Yaun v. Allis-Chalmers Mfg. Co., supra note 29.
40. Greco v. Bueciconi Eng'r Co., 283 F. Supp. 978 (W. D. Pa. 1967), aff'd, 407 F.2d 87 (3d Cir. 1969).
41. Restatement, supra note 34, Comment m at 356; Vandermark v. Ford Motor Co., 37 Cal. Rptr. 896, 391 P.2d 256, 403 P.2d 145 (1965).
42. Restatement, supra note 34, Comment n at 356.
43. Id.; Prosser, Law of Torts (3d) 538, 540 (1964); Sweeney v. Matthews, 94 Ill. App. 6, 236 N.E.2d 439 (1968); Williams v. Brown Mfg. Co., 93 Ill. App. 334, 236 N.E.2d 125 (1968).
44. State Farm Fire & Casualty Co. v. Amazon, 390 F. Supp. 3d 964, 968 (W.D. Wis. 2019).
45. Id. at 973.
46. Id. at 968–69.

5001 PATERNITY: CHILD OF UNMARRIED WOMAN

It is undisputed in this case that the petitioner, _____, gave birth to a (male, female) child in the _____ of _____, County of _____, State of _____, on the _____ day of _____, 20____, and that at the time of the birth of that child, the petitioner was unmarried. The petition in this action alleges that (respondent) is the father of that child.

(Respondent) denies that he is the father of the petitioner's child, and it is for you, the jury, to determine from the evidence, under my instructions, whether (respondent) is the father of (child).

Wis JI Civil 110, Arguments of Counsel

Wis JI Civil 115, Objections of Counsel

Wis JI Civil 120, Judge's Demeanor

Wis JI Civil 130, Stricken Testimony

Wis JI Civil 215, Credibility of Witnesses; Weight of Evidence

Wis JI Civil 260, Expert Testimony

Wis JI Civil 265, Expert Testimony: Hypothetical Question

Wis JI-Civil 205, Burden of Proof: Middle

The verdict consists of only one question.

"Is the respondent, _____, the father of _____, born on the _____ day of _____, 20____?"

You must answer this question either "yes" or "no."

It is not necessary for (petitioner) to prove the exact date on which the child was conceived. It must be proved to have occurred on such a date as will satisfy you [by the degree of proof required] that (child) was the result of sexual intercourse with (respondent).

The testimony in this case established that the child, _____, was born on the ____ day of _____, 20____, and weighed _____ lbs. _____ ozs. at birth.

A section of the Wisconsin statutes provides that the mother is competent to testify as to the child's birth weight. Where such birth weight is 5 ½ pounds or more, the child is presumed to be full term (unless competent evidence to the contrary is present). The conception of the child shall be presumed to have occurred within a span of time extending from 240 to 300 days before birth (unless competent evidence to the contrary is presented to the court).

Therefore, petitioner's child is presumed to have been conceived between the day of _____, 20____, and the _____ day of _____, 20____.

(Previously the court ordered (child), (petitioner), and (respondent) to submit to genetic tests. Although so ordered, (respondent) refused to submit to the genetic test. You may consider the refusal along with all the other evidence in the case in determining whether he is the father.)

Previously, the court ordered the child, the petitioner, and the respondent to submit to genetic tests. The reports of those tests have been received in evidence as Exhibit _____. The genetic test establishes a statistical probability of paternity. You may give the test

results such weight as you deem appropriate on the issue of whether (respondent) is the father of (child).

(If the presumption of paternity applies, give the following instruction.)

In this case, the genetic test report establishes a statistical probability of _____% that (respondent) is the father of (child). From this genetic test, a presumption arises that (respondent) is the father of (child). But there is evidence in the case which may be believed by you that (respondent) is not the father. You must resolve the conflict. Unless you are convinced by the greater weight of the credible evidence, to a reasonable certainty, that it is more probable that he is not the father, you must consider this presumption as conclusive evidence of paternity and find that he is the father.

Wis JI-Civil 180, Five-Sixths Verdict.

Now, members of the jury, the duties of counsel and the court have been performed. The case has been argued by counsel. The court has instructed you regarding the rules of law which should govern you in your deliberations. The time has now come when the great burden of reaching a just, fair, and conscientious decision of this case is to be thrown wholly upon you, the jurors, selected for this important duty. You will not be swayed by sympathy, prejudice, or passion. You will be careful and deliberate in weighing the evidence. I charge you to keep your duty steadfastly in mind and, as upright citizens, to render a just and true verdict.

When you retire to the jury room, your first duty will be to elect one juror to preside over your deliberations and write in the answer you have agreed upon. His or her vote,

however, is entitled to no greater weight than the vote of any other juror. When your deliberations are concluded and your answer inserted in the verdict, the presiding juror will sign the verdict, fix the date on the verdict, and all of you will return with the verdict into the court.

The clerk may now swear the bailiffs.

SPECIAL VERDICT

Is the respondent, _____, the father of _____,
born on the _____ day of _____, 20____?

Answer:
Yes or No

COMMENT

This instruction was originally approved in 1988 and revised in 1995, 1996, and 2002. The Comment was revised in 2021. The 2002 revision amended the language regarding the burden of proof to conform to the Committee's 2002 revisions to Wis. JI-Civil 200 and 205, the instructions on the civil burdens of proof. See Wis. JI-Civil 200, Comment. The 2021 revision amended the Comment to reflect statutory changes as provided in 2019 Wisconsin Act 95 concerning "paternity."

Wis. Stat. § 767.47(8) provides that the party bringing the action shall have the burden of proof by clear and satisfactory preponderance of the evidence. The Committee interprets that language to mean the middle burden as expressed in Wis JI Civil 205.

Wis. Stat. § 767.48(4). If any party refuses to submit to a genetic test, this fact shall be disclosed to the fact finder.

Wis. Stat. § 767.50(1). The trial shall be by jury only if the respondent verbally requests a jury trial either at the initial appearance or pretrial hearing or requests a jury trial in writing prior to the pretrial hearing.

Wis. Stat. § 767.50(2). The jury shall consist of 6 persons with the verdict to be agreed upon by at least 5 jurors.

Wis. Stat. § 767.475(3). Evidence as to the time of conception may be offered as provided in Wis. Stat. § 891.395.

Wis. Stat. § 767.48(1m). If the statistical probability of the respondent being the father is 99.0% or higher, he shall be rebuttably presumed to be the child's parent.

Wis. Stat. § 891.395 provides:

In any paternity proceeding . . . , the mother shall be competent to testify as to the birth weight of the child whose paternity is at issue, and where the child whose paternity is at issue weighed 5 1/2 pounds or more at the time of its birth, the testimony of the mother as to the weight shall be presumptive evidence that the child was a full term child, unless competent evidence to the contrary is presented to the court. The conception of the child shall be presumed to have occurred within a span of time extending from 240 days to 300 days before the date of its birth, unless competent evidence to the contrary is presented to the court.

The Committee revised the paternity instruction in 1988 in response to legislation and decisions of the court of appeals and supreme court. The Wisconsin Legislature in the 1987-89 budget bill (1987 Wisconsin Act 27) revised procedures in paternity actions.

The court of appeals in 1987 held that before the jury can consider the statistical probability of paternity as shown by blood tests as evidence of paternity, it must first find that the mother and the alleged father had intercourse during the conception period. In re Paternity of M.J.B., 137 Wis.2d 157, 404 N.W.2d 64 (Ct. App. 1987). See also In re Paternity of Taylor R.T., 199 Wis.2d 500, 544 N.W.2d 926 (Ct. App. 1996); T.A.T. v. R.E.B. 144 Wis.2d 638, 650, 425 N.W.2d 404 (1988). Therefore, the court of appeals found that the jury instruction should provide that if the evidence does not prove that the mother and alleged father had sexual intercourse at a time when the child could have been conceived, then the jury should find nonpaternity regardless of the probability of paternity results in the blood test reports. The supreme court reversed In re Paternity of M.J.B., 144 Wis.2d 638, 425 N.W.2d 404 (1988). The court stated:

We disagree with the court of appeals that an independent determination of sexual intercourse must be made by the jury before it can consider the statistical probability of paternity as evidence of paternity. Section 767.50 provides that "the main issue shall be whether the alleged . . . father is or is not the father of the mother's child." It is true that one of the elements in a paternity suit is sexual intercourse between the mother and alleged father occurring during the conceptive period. However, the occurrence of sexual intercourse during the time of possible conception is not an issue separate from the main issue. It does not require an independent determination by the jury; it is an element of the case. If the petitioner fails to introduce sufficient evidence of sexual intercourse to establish a prima facie case of paternity, the defendant can simply move for a dismissal of the case. Likewise, the petitioner is precluded from introducing the blood test results until evidence of sexual intercourse is received.

Effect of Statutory Presumption. The presumption of paternity only applies where each set of admissible blood tests is 99.0% or higher. In re Paternity of J.M.K., 160 Wis.2d 429, 465 N.W.2d 833 (Ct. App. 1991). In J.M.K., there was blood test data showing a 97.06% probability and additional blood tests showing a 99.45% probability. The trial court refused to instruct the jury on the rebuttable presumption of paternity as contained in this instruction and the court of appeals affirmed. The court of appeals noted that the record disclosed no request to instruct the jury on the presumption if it chose to accept the higher test result nor did the parties present evidence on the superiority of one test over the other. The court of appeals, therefore, did not address the propriety of a "modified presumption instruction in such cases. J.M.K., *supra* at 433.

2019 Wisconsin Act 95 [effective date: August 1, 2020] created a new legal presumption of paternity. Under the act, a man is presumed to be a child's father if no other man is presumed to be the father, and the man has been conclusively determined from genetic test results to be the father.

Under Wis. Stat. § 767.804, genetic test results constitute a conclusive determination of paternity if all of the following conditions apply:

1. Both the child's mother and the male are over the age of 18 years.
2. The genetic tests were required to be performed by a county child support agency under s. 59.53 (5) pursuant to s. 49.225.
3. The test results show that the male is not excluded as the father and that the statistical probability of the male's parentage is 99.0 percent or higher.
4. No other male is presumed to be the father under s. 891.405 or 891.41 (1).

8035 HIGHWAY OR SIDEWALK DEFECT OR INSUFFICIENCY

Every municipality has the duty to exercise ordinary care to construct, maintain, and repair its (highways) (sidewalks) so that they will be reasonably safe for public travel. This duty does not require the municipality to guarantee the safety of its (highways) (sidewalks) or render them absolutely safe for all persons who travel upon them. It is sufficient if they are constructed (and) (maintained) so as to be reasonably safe.

A (highway) (sidewalk) is defective when it is not (constructed) (maintained) so as to be reasonably safe for anticipated public use.

(However, before you may find (municipality) negligent because of the existence of a defective condition, you must first find that (municipality) through its officers or employees had either actual notice of the defect, or constructive notice, because the defect had existed for such a length of time before the accident that the municipality through its officers and employees in the exercise of ordinary care should have discovered it in time to remedy the defect.)

You may consider the topography and development of the locality (the standard of sidewalk construction which this part of the municipality had attained), as well as the amount and character of traffic on the (highway) (sidewalk) and the intended use of the (highway) (sidewalk) by the public.

COMMENT

This instruction was approved in 1974 and numbered Wis JI-Civil 1029. It was renumbered in 1985. Editorial changes were made in 1994. The instruction and comment were updated in 2004. The

comment was updated in 2015 and 2021.

The Committee believes that claims for insufficiency or want of repairs of a roadway remain viable under Wis. Stat. § 893.80(4) and Holytz v. Milwaukee, 17 Wis.2d 26, 115 N.W.2d 618 (1962). However, governmental immunity, under Holytz, supra, may bar some claims. The supreme court has also intimated that in abolishing municipal tort immunity, Holytz, provides an independent basis for proceeding in these actions. Schwartz v. City of Milwaukee, 43 Wis.2d 119, 123, 168 N.W.2d 107 (1969); Schwartz v. City of Milwaukee, 54 Wis.2d 286, 288-89, 195 N.W.2d 480 (1972). The court stated, at 54 Wis.2d 288-89, that:

...sec.81.15 might as well be repealed by the legislature since its purported language creating a cause of action has been supplanted by Holytz v. Milwaukee . . .

This language was cited with approval in Morris v. Juneau County, 219 Wis.2d 543, 555, 579 N.W.2d 618 (1962).

Prior to being amended in 2012, Wis. Stat. § 893.83(1) (formerly numbered Wis. Stat. § 81.15) provided a separate standard for municipal liability for highway defect claims. The statute provided that a municipality may be held liable for damages of up to \$50,000 that “happen to any person or his or her property by reason of the insufficiency or want of repairs of any highway that any town, city, or village is bound to keep in repair.” Under this statutory provision, a municipality was not liable for damages sustained by reason of an accumulation of snow or ice upon a bridge or highway, unless the accumulation existed for three weeks or more. The court in Morris held that these types of claims were not subject to discretionary immunity.

However, in 2012, the legislature eliminated the separate standard for claims based on highway defects. Following the enactment of 2011 Wisconsin Act 132 [effective date: April 5, 2012], claims based on highway defects are subject to the grant of discretionary immunity found in Wis. Stat. 893.80, as well as all the procedures found in that statute. Additionally, the legislature has provided that highway defect claims may not go forward if they are based on an accumulation of snow or ice, unless that accumulation has existed for three weeks or more. The court of appeals has interpreted the amended § 893.83 as providing that snow and ice accumulations claims are absolutely barred if the accumulation existed for less than three weeks, and that they are subject to the grant of discretionary immunity found in Wis. Stat. § 893.80 if the accumulation existed for three weeks or more. Knoke v. City of Monroe, --- Wis.2d ---, 953 N.W.2d 889 (2021).

WIS JI-CIVIL

TABLE OF CASES CITED

118th Street Kenosha, LLC v. Wisconsin Dept. of Transportation, 8100, 8111
260 North 12th Street, LLC v. State of Wisconsin Dept. of Transportation, 8100, 8101
1325 N. Van Buren, LLC v. T-3 Grp., Ltd., 2400

A

A. E. Inv. Corp. v. Link Builders, Inc., 1005, 1022.4, 8020
A.G. v. Travelers Ins. Co., 3110
Abbott v. Truck Ins. Exch. Co., 1000, 1280
ABC Outdoor Advertising, Inc. v. Dolhun's Marine, Inc., 3030
Abdella v. Catlin, 2800
Ackley v. Farmers Mut. Auto Ins. Co., 1105A
Acme Equip. Corp. v. Montgomery Coop. Creamery Ass'n, 3220, 3230
Adams v. Maxcy, 2200
Affett v. Milwaukee & Suburban Transport. Corp., 1796
Affiliated F. M. Ins. Co. v. Constitution Reinsurance Corp., 3051
Afflerbaugh v. Geo. Grede & Bro., 1025.7
Ahola v. Sincock, 1023, 1145
Aicher v. Wis. Patients Comp. Fund, 1023, 1870, 1895, 1897
Aikens v. Wisconsin, 2820
Albert v. Waelti, 1023.14
Alden v. Matz, 1133, 1132
Allen v. Bonnar, 1760
Allen v. Chicago N.W. Ry., 1803, 8100
Allen v. Ross, 3117
Allen v. Wisconsin Public Service Corp., 950
Allen & O'Hara v. Barrett Wreckers, Inc., 2820
Allie v. Russo, 8060
Allis-Chalmers Mfg. Co. v. Eagle Motor Lines, 1026.5
Alpirn v. Williams Steel & Supply Co., 3056
Alsteen v. Gehl, 1511, 2725
Alsum v. WISDOT, 8102, 8103, 8120, 8130, 8135
Alt v. American Family Mut. Ins. Co., 2760
Alvarado v. Sersch, 1005
Alwin v. State Farm Fire and Casualty Co., 1390
American Family Mut. Ins. Co. v. Dobrzynski, 215
American Family Mut. Ins. Co. v. Osusky, 3112
American Family Mut. Ins. Co. v. Shannon, 152
American Fidelity & Casualty Co. v. Travelers Indem. Co., 1350
American Ins. Co. v. Rural Mut. Casualty Ins. Co, 3117
American Nat'l Red Cross v. Banks, 1025.5
American States S. Co. v. Milwaukee N. R. Co., 8100, 8120
American Steam Laundry Co. v. Riverside Printing Co., 3725
American Tobacco Co. v. United States, 2802, 2804
Andersen v. Andersen, 260
Anderson v. Alfa-Laval Agri, Inc., 3240
Anderson v. Anderson, 4080
Anderson v. Continental Ins. Co., 1707, 2725, 2761, 3044
Anderson v. Eggert, 260
Anderson v. Seelow, 100
Anderson v. Stricker, 1144, 1210

WIS JI-CIVIL CASES CITED

Anderson v. Tri-State Home Improvement Co., 2400, 2405, 2405.5
Anderson v. Yellow Cab Co., 1025
Andraski v. Gormley, 1125
Anello v. Savignac, 2000
Ansul v. Employers Ins. Co. of Wausau, 3116
Antoniewicz v. Reszczynski, 1901, 8012, 8015, 8020, 8025
Antwaun A. v. Heritage Mut. Ins. Co., 1005, 1009
Apex Hosiery Co. v. Leader, 2800
Appleton Chinese Food v. Murken Ins., 1023.6
Appleton Elec. Co. v. Rogers, 3063
Appleton State Bank v. Lee, 3048, 3076
Arbet v. Gussarson, 1500
Arents v. ANR Pipeline Company, 8100, 8101, 8102, 8103
Arledge v. Scherer Freight Lines, 1026
Armstrong v. Milwaukee Ins. Co., 1390, 1391
Arndt Brothers Minkery v. Medford Fur Foods, 3200
Arnold v. National Bank of Waupaca, 2400
Arnold v. Shawano County Agricultural Soc'y, 1815
Arsand v. City of Franklin, 1600, 4000, 4030, 4060
Ashley v. American Auto Ins. Co., 1090, 1758, 1760
Atlee v. Bartholomew, 3020
Attoe v. State Farm Mut. Auto Ins. Co., 3057
Augsburger v. Homestead Mutual Ins. Co., 1390, 1391
Augustine v. Anti-Defamation League B'nai B'rith, 2780, 2800
Ault v. International Harvester Co., 358
Auric v. Continental Cas. Co., 1023.5
Austin v. Ford Motor Co., 1277
Autumn Grove Joint Venture v. Rachlin, 3044
Ayala v. Farmers Mut. Auto Ins. Co., 1500

B

Bach v. Liberty Mut. Fire Ins. Co., 1610, 1760
Bachand v. Connecticut Gen. Life Ins. Co., 2520
Bachman v. Salzer, 2401
Bade v. Badger Mut. Ins. Co., 3057, 3074
Badger Cab Co. v. Soule, 2620
Badger Furniture Co. v. Industrial Comm'n, 4030, 4060
Bagnowski v. Preway, Inc., 1022.4
Baier v. Farmers Mut. Auto Ins. Co., 1157
Baierl v. Hinshaw, 1001
Bailey v. Bach, 100, 1285
Bailey v. Hagen, 1310
Bailey v. Hovde, 205, 3040
Baird v. Cornelius, 1046
Baker v. Herman Mut. Ins. Co., 1075
Baker v. Northwestern Nat'l Casualty, 2760, 2770, 3725
Balas v. St. Sebastian's Congregation, 1900.4
Baldewein Co. v. Tri-Clover, Inc., 2769
Ballard v. Lumbermen's Mut. Casualty Co., 410, 1760, 1815
Bank of Calif., v. Hoffmann, 4020
Bank of Sheboygan v. Fessler, 3040
Bank of Sun Prairie v. Esser, 2401, 3068
Bank of Sun Prairie v. Opstein, 3057
Bankert v. Threshermen's Mut. Ins. Co., 1013, 1014
Bannach v. State Farm Mut. Auto Ins. Co., 1350
Barker Barrel Co. v. Fisher, 1310

WIS JI-CIVIL CASES CITED

Barlow v. DeVilbiss Co., 3200
Barnard v. Cohen, 2520
Barnes v. Lozoff, 1022.4, 1812
Barney v. Mickelson, 1023
Barr v. Granahan, 3020
Barragar v. Industrial Comm'n, 1605, 4045
Barry v. Employers Mut. Casualty Co., 1022.6, 1900.4
Bartelt v. Smith, 4080
Barth v. Downey Co., 1022.2
Barthel v. Wisconsin Elec. Power Co., 1901
Basche v. Vanden Heuvel, 1725
Battice v. Michaelis, 1191
Bay View Packing Co. v. Taff, 2511
Beacon Fed. Sav. & Loan Ass'n v. Panoramic Enter., Inc., 3020
Becker v. Barnes, 315
Beer v. Strauf, 1105
Beers v. Bayliner Marine Corp., 400
Behringer v. State Farm Mut. Auto Ins. Co., 1735
Bekkedal v. City of Viroqua, 1
Bell v. County of Milwaukee, 1838
Bell v. Duesing, 1012, 1582
Belling v. Harn, 3110
Bellrichard v. Chicago & N. W. Ry., 1336, 1405, 1408, 1409
Below v. Norton, 2400, 2418, 2419
Bembister v. Aero Auto Parts, 1336
Benke v. Mukwonago Mut. Ins. Co., 2761
Benkoski v. Flood, 2418, 2720
Bensend v. Harper, 180
Bentley v. Foyas, 2401, 2402
Bentzler v. Braun, 1114, 1277, 1300
Bergevin v. Chippewa Falls, 1900.4
Berner Cheese Corp. v. Krug, 1707.1
Bernhagen v. Marathon Fin. Corp., 4028
Betchkal v. Willis, 1005, 1009, 1350
Betehia v. Cape Cod Corp., 3200, 3204, 3248
Beul v. ASSE International, Inc., 2005.5
Bey v. Transport Indem. Co., 1065
Beyak v. North Central Food Systems, Inc., 8045
Bielski v. Schulze, 1006, 1383
Biersach v. Wolf River Paper & Fiber Co., 1580, 1585, 1590
Bigelow v. West Wis. Ry. Co., 8102, 8103, 8105
Binsfeld v. Curran, 1045
Bird v. Kleiner, 2400
Bishop-Babcock Co. v. Keeley, 3034
Black v. General Elec. Co., 260
Blahnik v. Dax, 100
Blair v. Staats, 1582
Blaisdell v. Allstate Ins. Co., 1766
Blankavag v. Badger Box & Lumber Co., 405
Bleyer v. Gross, 1758
Bloom v. Krueger, 4040
Bloomer v. Bloomer, 1796
BMW of North Am., Inc., v. Gore, 1707.1, 1707.2
Bockemuhl v. Jordan, 4020
Bode v. Buchman, 410
Boelter v. Ross Lumber Co., 1705
Bohn Mfg. Co. v. Reif, 3034

WIS JI-CIVIL CASES CITED

Bohnsack v. Huson-Ziegler Co., Inc., 1605
Boles v. Milwaukee County, 1880
Bolick v. Gallagher, 1722A
Booth v. Frankenstein, 410, 1135, 1140
Borello v. United States Oil Co., 950
Borg v. Downing, 3220
Boschek v. Great Lakes Mut. Ins. Co., 3116
Bourassa v. Gateway Erectors, Inc., 1051, 1767, 1768, 1796
Bourestom v. Bourestom, 1112
Bovi v. Mellor, 1144
Bowen v. American Family Ins. Co., 1897
Bowen v. Industrial Comm'n, 410
Bowen v. Lumbermens Mut. Casualty Co., 1510, 1511, 1770, 1855
Bowers v. Treuthardt, 1065, 1325, 1610
Boynton Cab Co. v. ILHR Dep't, 1025
Bradford v. Milwaukee & Suburban Transp. Corp., 1025
Bradley v. Harper, 1025.5
Brain v. Mann, 1760
Brandenburg v. Briarwood Forestry Services, LLC, 1022.6
Bratt v. Peterson, 3074
Braun v. Wisconsin Elec. Power Co., 8102, 8103, 8105
Brekken v. Knopf, 2005.5
Brest v. Maenat Realty, 3040
Brethorst v. Allstate, 2761
Breunig v. American Family Ins. Co., 1021, 1021.2
Brew City Redevelopment Group v. The Ferchill Group, 2808, 2820
Brice v. Milwaukee Auto Ins. Co., 1010, 1582
Bridgeport Mortgage & Realty Corp. v. Whitlock, 3045
Bridgkort Racquet Club v. University Bank, 1796
Briese v. Maechtle, 1010
Briggs v. Miller, 3010, 3020
Bright v. City of Superior, 4015
Bristol v. Eckhardt, 2605
Britz v. American Ins. Co., 3117
Broadbent v. Hegge, 3057
Brockmeyer v. Dun & Bradstreet, 2750
Brodis v. Hayes, 1022.6, 4060
Brons v. Bischoff, 1900.4
Brooks v. Hayes, 1022.6, 4060
Brown v. Dibbell, 1023.4
Brown v. Maxey, 1707, 1707.1, 3051
Brown v. Milwaukee Terminal Ry. Co., 1920, 1922, 1928
Brown v. Muskego Norway School Dist. Group Health Plan, 4035, 4045
Brown v. Oneida Knitting Mills, Inc., 3082
Brown v. Travelers Indem. Co., 1055, 1501
Brown v. Wisconsin Natural Gas Co., 1002, 1003
Browne v. State, 2115
Brownsell v. Klawitter, 2600, 2620
Brueggeman v. Continental Casualty Co., 1910
Brunette v. Slezewski, 1806
Brunke v. Popp, 1006
Brunner v. Heritage Co., 2200, 2800
Brunner v. Van Hoof, 1145
Bruss v. Milwaukee Sporting Goods Co., 3250
Bruttig v. Olsen, 1013, 1014
Bryan v. Noble, 3072
Buchberger v. Mosser, 3115

WIS JI-CIVIL CASES CITED

Buchholz v. Rosenberg, 3700
Buckman v. E. H. Schaefer & Assoc., Inc., 3086
Buckner v. General Casualty Co., 3115
Bump v. Voights, 1885
Bunbury v. Krauss, 3074
Bunkfeldt v. Country Mut. Ins. Co., 1140
Burant v. Ortloff, 1045
Burch v. American Family Mut. Ins. Co., 1021
Burg v. Cincinnati Cas. Ins. Co., 1120
Burke v. Milwaukee & Suburban Transp. Co., 1005, 1009
Burke v. Tesmer, 1165
Burkhalter v. Hartford Accident & Indem. Ins. Co., 1155, 1157
Burkhardt v. Smith, 8060
Burnside v. Evangelical Deaconess Hosp., 1024
Bursack v. Davis, 2100
Burton v. Sherwin-Williams Co., 3295
Burzlaff v. Thoroughbred Motorsports, Inc., 3303
Bushweiler v. Polk County Bank, 1025.5, 1025.7
Buss v. Clements, 3117, 3118
Butler v. Industrial Comm'n, 4045
Butts v. Ward, 1320
Butzow v. Wausau Memorial Hosp., 1710, 1722A, 1723
Buxbaum v. G. H. P. Cigar Co., 3725
Buza v. Wojtalewicz, 8060
Bychinski v. Sentry Ins., 1796, 1797
Byerly v. Thorpe, 1052
Byrnes v. Metz, 1731

C

Calaway v. Brown County, 8101, 8120
Calero v. Del Chemical, 2500, 2501, 2511, 2513, 2520, 2552
Calhoun v. Lasinski, 1000
Calhoun v. Western Casualty & Sur. Co., 3117
California Wine Ass'n v. Wisconsin Liquor Co. of Oshkosh, 3024, 3049, 3083, 3084
Callan v. Peters Constr. Co., 1056, 1901, 1904
Callies v. Reliance Laundry Co., 1835
Calumet Cheese Co. v. Chas. Pfizer & Co., 3200
Cameron v. Union Auto Ins. Co., 1895
Camp v. Anderson, 1511
Campbell v. Spaeth, 1032
Campenni v. Walrath, 1390
Camper Corral v. Alderman, 1023.6
Canifax v. Hercules Powder Co., 3200
Converters Equip. Corp. v. Condes Corp., 2500
Capello v. Janeczko, 410, 1052, 1054
Capital Sand & Gravel Co. v. Waffenschmidt, 305
Capital Investments, Inc. v. Whitehall Packing Co. Inc., 3049, 3051
Carazalla v. State, 8110, 8125
Carl v. Spickler Ent. Ltd, 3302
Carlson v. Drews of Hales Corners, Inc., 1760, 1902
Carlson & Erickson v. Lampert Yards, 205
Carr v. Amusement, Inc., 410, 1900.4
Carson v. Beloit, 1023, 1385
Carson v. Pape, 2115
Cary v. Klabunde, 1315
Casper v. American International South Ins. Co., 1005

WIS JI-CIVIL CASES CITED

Cass v. Haskins, 3016
Cedarburg Light & Water Comm'n v. Allis-Chalmers, 3240
Central Corp. v. Research Products Corp., 2769
Champion Companies v. Stafford Development, 3700
Chandelle Enters., LLC v. XLNT Dairy Farm, Inc., 8060
Chapleau v. Manhattan Oil Co., 1804, 1805
Chapman v. Zakzaska, 2400
Chapnitsky v. McClone, 1506
Charolais Breeding Ranches, Ltd. v. FPC Securities Corp., 2780
Chart v. General Motors Corp., 325, 358
Chicago & N.W. R. Co. v. James, 4015
Chicago & N.W. Ry. v. Railroad Comm'n of Wisconsin, 1412
Chicago, Milwaukee, St. Paul & Pac. R.R. Co. v. Chicago & N.W. Transp. Co., 3070
Chille v. Howell, 1153
Chmill v. Friendly Ford-Mercury, 3301, 3302
Christ v. Exxon Mobil Corp., 950
Christians v. Homestake Enter., Ltd., 1011, 8025, 8027
Christianson v. Downs, 1023
Chrysler Corp. v. Lakeshore Commercial Fin. Corp., 2780
Chudnow Constr. Corp. v. Commercial Discount Corp., 3020
Cierzan v. Kriegal, 3110
Cincoski v. Rogers, 1870
Cirillo v. Milwaukee, 1381
City of Franklin v. Badger Ford Truck Sales, 3290
City of Hartford v. Godfrey, 1220, 1225
City of Milwaukee v. Allied Smelt Corp., 410
City of Milwaukee v. NL Industries, Inc., 1920, 2800
City of Milwaukee v. Roadster LLC, 8104
City of Milwaukee Post No. 2874 VFW v. Redevelopment Authority, 8100
City of Stoughton v. Thomasson Lumber Co., 400
Clark v. Corby, 1901
Clark v. Leisure Vehicles, Inc., 1500
Clarmar Realty Company, Inc. v. Redevelopment Authority of the City of Milwaukee, 8100, 8101, 8145
Claypool v. Levin, 950
Cluskey v. Thranow, 2401
Coakley v. Prentiss-Wabers Stove Co., 3254
Cobb v. Simon, 2100
Cochran v. Allyn, 1600
Coenen v. Van Handel, 215, 1280
Cogger v. Trudell, 1861
Cohan v. Associated Fur Farms, Inc., 3200
Cohen v. Lachenmaier, 3020
Cole v. Schaub, 1756
Coleman v. Garrison, 1742
Colla v. Mandella, 1145
Collier v. State, 215
Collins v. Eli Lilly Co., 1707, 3295
Collova v. Mutual Serv. Casualty Ins. Co., 1730
Colton v. Foulkes, 1022.4
Commerce Ins. Co. v. Merrill Gas Co., 1002, 1145
Commonwealth Tel. Co. v. Paley, 4005
Concrete Equip. Co. v. Smith Contract Co., Inc., 3207
Coney v. Milwaukee & Suburban Transp. Corp., 410
Congreve v. Smith, 1920
Connar v. West Shore Equip. of Milwaukee, Inc., 1900.2
Conrad Milwaukee Corp. v. Wasilewski, 3012, 3042
Conrardy v. Sheboygan County, 315

WIS JI-CIVIL CASES CITED

Consolidated Papers, Inc. v. ILHR Dep't, 305
Continental Ore Co. v. Union Carbide & Carbon Corp., 2806
Convenience Store Leasing and Management v. Annapurna Marketing, 3070
Cook v. McCabe, 3062
Cook v. Wisconsin Tel. Co., 1096
Cooper v. Chicago & N.W. Ry., 230
Copperweld Corp. v. Independence Tube Corp., 2808
Corbitt v. Stonemetz, 3054
Cords v. Anderson, 1007.5, 1796, 1797
Corning v. Dec Aviation Corp., 325
Correa v. Woodman's Food Market, 1900.4
Coryell v. Conn, 1767, 1768
Costa v. Neimon, 2406
Costas v. City of Fond du Lac, 1920, 1928, 1930, 1932
Couillard v. Van Ess, 1911, 8020
Cramer v. Theda Clark Memorial Hosp., 1385
Crane v. Sears Roebuck & Co., 3200, 3262
Cranston v. Bluhm, 2800
Crest Chevrolet-Oldsmobile Cadillac, Inc. v. Willemssen, 1383, 1731, 8045
Criswell v. Seaman Body Corp., 1051, 1911
Cronin v. Cronin, 1870
Cross v. Leuenberger, 1910
Crotteau v. Karlgaard, 1708, 2006
Crowder v. Milwaukee & Suburban Transp. Corp., 155
Crown v. General Motors Corp., 3200
Crown Life Ins. Co. v. LaBonte, 3044
Cruis Along Boats, Inc., v. Standard Steel Prods. Mfg. Co., 1804
Crye v. Mueller, 1090
Cudd v. Crownhart, 2780
Culton v. Van Beek, 1080
Culver v. Webb, 1285
Cunnien v. Superior Iron Works Co., 1055
Curtis Land & Loan Co. v. Interior Land Co., 3014
Cutler Cranberry Co. v. Oakdale Elec. Coop., 1806
Czapinski v. St. Francis Hosp., 1897
Czarnetzky v. Booth, 1080

D

D.L. v. Huebner, 358, 410, 1019
D.L. Anderson's Lakeside Leisure Co., Inc. v. Anderson, 2790, 2791
Dabareiner v. Weisflog, 1797
Dahl v. Ellis, 1260
Dahlberg v. Jones, 1385, 1385.5
Dakter v. Cavallino, 1005
Dalton v. Meister, 1707, 2500, 2516, 2520, 2800
Darst v. Fort Dodge D.M. & S.R.R., 3074
Dauplaise v. Yellow Taxicab Co., 1025
Davis v. Allstate Ins. Co., 1075, 2761
Davis v. Feinstein, 1050
Davis v. Nuzum, 2400
Dawson v. Jost, 410
DeBaker v. Austin, 1354
DeBruine v. Voskuil, 1023
DeChant v. Monarch Life Ins. Co., 410, 2761
Degenhardt v. Heller, 2004
Dehnart v. Waukesha Brewing Co., 3710, 3735

WIS JI-CIVIL CASES CITED

De Keuster v. Green Bay & W. R.R., 215
Dekeyser v. Milwaukee Automobile Ins. Co., 1030
Delaney v. Supreme Inv. Co., 8030
Delap v. Institute of Am., Inc., 3048
Delmore v. American Family Mut. Ins. Co., 1046, 1047, 1047.1
Delong v. Sagstetter, 1350
Delvaux v. Vanden Langenberg, 100, 1580, 8045
Denil v. Coppersmith, 1391
Denil v. Integrity Mut. Ins., 1815
Denny v. Mertz, 2500, 2501, 2505, 2505A, 2509, 2516, 2520
Denzer v. Rouse, 1023.5
DeRuyter v. Wisconsin Elec. Power Co., 1605, 4035
DeSombre v. Bickel, 3052, 3700
Desotelle v. Continental Casualty Co., 4035
DeThorne v. Bakken, 1023.5, 1023.5A
Devine v. McGowan, 1403
Dick v. Heisler, 190
Dickman v. Schaeffer, 1766
Dickson v. Pritchard, 3725
Diemel v. Weirich, 1767, 1768
Diener v. Heritage Mut. Ins. Co., 1114
Dieter v. Chrysler Corp., 3301
Dietz v. Hardware Dealers Mut. Fire Ins. Co., 3115, 3116
Digicorp, Inc. v. Ameritech Corp., 2400
DiMiceli v. Klieger, 2500, 2505
Dippel v. Sciano, 1924, 1930, 3200, 3260, 3260.1, 3268
Docter v. Furch, 3044
Dodge v. Dobson, 410
Doern v. Crawford, 3110
Dombeck v. Chicago, M. St. P. & P. Ry., 1405, 1407, 1408, 1409
Dombrowski v. Albrent Freight & Storage Corp., 1500
Dombrowski v. Tomasino, 1
Donlea v. Carpenter, 1350, 1795
Donovan v. Barkhausen Oil Co., 2200, 2200.1, 2200.2
Doolittle v. Western States Mut. Ins. Co., 1750.2
Douglas v. Dewey, 1900.4
Doyle v. Engelke, 1383
Doyle v. Teasdale, 3072
Drake v. Farmers Mut. Auto Ins. Co., 1157
Draper v. Baker, 1707
Draper v. United States, 2115
Dreazy v. North Shore Publishing Co., 3022
Droege v. Daymaker Cranberries, Inc., 8060
Duffy Law Office v. Tank Transport, 1023.5, 1023.5A, 1023.8
Dumas v. Koebel, 2550, 2725, 2780
Dumer v. St. Michael's Hosp., 1385
Duncan v. Steeper, 2900
Dunn v. Pertsch Const., Inc., 3074
Durand West, Inc. v. Milwaukee W. Bank, 3020
Dutcher v. Phoenix Ins. Co., 1047.1
Dwyer v. Jackson Co., 8051
Dykstra v. Arthur G. McKee & Co., 1900.4, 1904

E

E. L. Chester Co. v. Wisconsin Power & Light Co., 1003
Eastern States Retail Lumber Dealers' Ass'n v. United States, 2800

WIS JI-CIVIL CASES CITED

Eckel v. Richter, 4035
Eckstein v. Northwestern Mut. Life Ins. Co., 3074
Edeler v. O'Brien, 1105A
Eden v. LaCrosse Lutheran Hosp., 1385
Edlebeck v. Hooten, 1610
Edward E. Gillen Co. v. John H. Parker Co., 3060
Egan v. Travelers Ins. Co., 1715
Ehlers v. Colonial Penn. Ins. Co., 3117
Eide v. Skerbeck, 8040
Einhorn v. Culea, 1005
Eleason v. Western Casualty & Sur. Co., 1021.2
Ellsworth v. Schelbrock, 202, 1723, 1756
Elmer v. Chicago & N.W. Ry., 2600
Elmergreen v. Kern, 3020
Emerson v. Riverview Rink & Ballroom, 8040, 8045
Employers Ins. Co. v. Pelczynski, 3112
Employers Mut. Ins. Co. v. Industrial Comm'n, 4030
Enea v. Pfister, 1600
Engel v. Dunn County, 1804, 3700
Engsberg v. Hein, 1144
Engstrum v. Sentinel Co., 1095
Erickson v. Prudential Ins. Co., 1014, 1014.5
Ernst v. Greenwald, 350
Ertl v. Ertl, 2900
Esch v. Chicago M. & St. P. R. Co., 8100
Estate of Ansell, 3024
Estate of Briese, 3020
Estate of Cavanaugh v. Andrade, 1031
Estate of Chayka, 3044
Estate of Daniels, 3110
Estate of Gooding, 8100
Estate of Hatten, 3020
Estate of Holt v. State Farm, 1861
Estate of Lade, 1812
Estate of Lube, 3012
Estate of Miller v. Storey, 2420
Estate of Nale, 1812
Estate of Neumann, 400, 405
Estate of St. Germain, 3024
Estate of Schoenkerman, 3020
Estate of Starer, 1610
Estate of Steffes, 1812
Estate of Stromstead, 1825
Estate of Voss, 1812
Estate of Zellmer, 3061
Everlite Mfg. Co. v. Grand Valley Machine & Tool Co., 3030
Ewen v. Chicago & N.W. Ry., 1012, 1861
Ewers v. Eisenzopf, 3202, 3220, 3225, 3230
Ewing v. Goode, 1023

F

Fabick, Inc. v. JFTCO, Inc., 2790
Fahrenberg v. Tengel, 415, 1707, 2520
Fairbanks v. Witter, 1708
Farley v. Salow, 3049
Farm Credit Bank of St. Paul v. F&A Dairy, 2200

WIS JI-CIVIL CASES CITED

Farmers Mut. Auto Ins. Co. v. Gast, 1500
Farrell v. John Deere Co., 1723
Faultersack v. Clintonville Sales Corp., 4020
Fawcett v. Gallery, 1605, 4045
Featherly v. Continental Ins. Co., 410, 1760, 1762
Federal Pants, Inc. v. Stocking, 2780
Fee v. Heritage Mut. Ins. Co., 1825
Fehrman v. Smirl, 415, 1024
Fenelon v. Butts, 1708
Ferdon v. Wisc. Patients Compensation Fund, 1023, 1870, 1895, 1897
Ferraro v. Koelsch, 2750
Ferris v. Location 3 Corp., 2400
Field v. Vinograd, 1230, 1582
Fieldhouse Landscape v. Gentile, 1812
Fields v. Creek, 1501
Fifer v. Dix, 1390
Filipiak v. Plombon, 1910
Finch v. Southside Lincoln-Mercury, Inc., 2780
Finke v. Hess, 1023
Finken v. Milwaukee County, 1025
Fire Ins. Exchange v. Cincinnati Ins. Co., 1390
Firemen's Fund Ins. Co. v. Schreiber, 1025.7, 4035
First Credit Corp. v. Behrend, 2401
First Nat'l Bank v. Hackett, 2400
First Nat'l Bank of Oshkosh v. Scieszinski, 2401, 2402
First Trust Co. v. Holden, 3020
First Wisconsin Land Corp. v. Bechtel Corp., 1806
First Wisconsin Nat'l Bank v. Oby, 3020
First Wisconsin Nat'l Bank of Milwaukee v. Wichman, 2790
First Wisconsin Trust Co. v. L. Wiemann Co., 3095
Fischer v. Cleveland Punch and Shear Work Co., 1760
Fischer v. Fischer, 60, 61, 1825
Fischer v. Ganju, 1023
Fisher v. Lutz, 4015
Fisher v. Simon, 1022.4
Fitzgerald v. Badger State Mut. Casualty Co., 1900.4
Fitzgerald v. Meissner & Hicks, Inc., 1815
Fiumefreddo v. Mclean, 1024
Fleming v. Thresherman's Mut. Ins. Co., 1383, 1580, 8045
Fletcher v. Ingram, 1025.5
Flies v. Fox Bros. Buick Co., 3200, 3240
Flynn v. Audra's Corp., 8045
Foellmi v. Smith, 1052, 1140, 3074
Foerster, Inc. v. Atlas Metal Parts Co., 2769
Foley v. City of West Allis, 1277, 1278, 1722A
Fond du Lac County v. Helen E.F., 7050, 7060, 7061
Fondell v. Lucky Stores, Inc., 1001, 1900.4, 1904
Foote v. Douglas County, 3116
Ford, Bacon & Davis, 1580
Ford Motor Co. v. Lyons, 2808
Forrer v. Sears Roebuck & Co., 3084
Fortier v. Flambeau Plastics Co., 1924, 1930
Foseid v. State Bank of Cross Plains, 2780, 3044
Foss v. Madison Twentieth Century Theaters, 2401
Foster v. Fidelity & Casualty Co. of N. Y., 3117
Fouse v. Persons, 1710, 1756
Fox v. Boldt, 3202

WIS JI-CIVIL CASES CITED

Francois v. Mokrohisky, 1023
Frank v. Metropolitan Life Ins. Co., 3018
Frankland v. Peterson, 1144, 1210
Franz v. Brennan, 1707
Fredrickson v. Kabat, 2007
Freeman v. Dells Paper & Pulp Co., 4005
Freeman v. Morris, 3022
Freuen v. Brenner, 1750.2
Frey v. Dick, 1035
Fricano v. Bank of America, 2418
Frinzi v. Hanson, 2500
Frion v. Coren, 1910
Frion v. Craig, 115
Froh v. Milwaukee Medical Clinic, S.C., 1023, 1385
Fuchs v. Kupper, 1707
Fuchsgrubber v. Custom Accessories, 3290
Fultz v. Lange, 1605, 4045
Fun-N-Fish, Inc. v. Parker, 3058

G

Gabriel v. Gabriel, 3074
Gage v. Seal, 1105A
Gall v. Gall, 3054
Gallagher v. Chicago & N.W. Ry., 1405
Galst v. American Ladder Co., 3242
Gamble-Skogmos v. Chicago & N.W. Transp. Co., 1410
Garceau v. Bunnell, 1105A, 1730
Garcia v. Samson's, Inc., 4015
Garfoot v. Fireman's Fund Ins. Co., 400
Garlick v. Morley, 4005, 4015
Garner v. Charles A. Krause Milling Co., 3220
Garrett v. City of New Berlin, 1510 1511
Garrison v. State of Louisiana, 2511
Gaspord v. Hecht, 1090
Gauerke v. Rozga, 2400, 2402
Gauthier v. Carbonneau, 1580, 1585, 1590
Gay v. Milwaukee Elec. Ry. & Light Co., 1145
Geis v. Hirth, 1030, 1105A
Geise v. Montgomery Ward, Inc., 180, 191, 1600, 1837
Geldnich v. Burg, 4035, 4040
Gelhaar v. State, 420
Genname v. Benson, 1812
Gendanke v. Wisconsin Evaporated Milk Co., 3076
General Elec. Co. v. N.K. Ovalle, Inc., 3074
Georgeson v. Nielsen, 4000, 4027
Georgia Casualty Co. v. American Milling Co., 1145
Gerbing v. McDonald, 1756
Gerlat v. Christianson, 1013
Gerovac v. Hribar Trucking, Inc., 3024
Gerrard Realty Corp. v. American States Ins. Co., 3117
Gertz v. Robert Welch, Inc., 2500, 2505, 2509, 2516, 2520
Gervais v. Kostin, 1600
Gessler v. Erwin Co., 3060, 3078
Gewanski v. Ellsworth, 4035
Gibson v. American Cyanamid, 3295
Gibson v. Overnite Transportation Company, 2507

WIS JI-CIVIL CASES CITED

Gibson v. Streeter, 1090
Gilberg v. Tisdale, 1056
Gill v. Benjamin, 3066
Gilman v. Brown, 1806
Gladfeldter v. Doemel, 1707
Glamann v. St. Paul Fire & Marine Ins., 1023.5
Gleason v. Gillihan, 1055, 1060, 1191
Godfrey Co. v. Crawford, 3058
Godoy v. E.I. du Pont De Nemours et al, 3260.1
Goebel v. General Bldg. Serv. Co., 1145
Goehmann v. National Biscuit Co., 1075
Goetz v. State Farm Mut. Auto Ins. Co., 3012
Goldberg v. Berkowitz, 1010
Goldenberg v. Daane, 1140
Goller v. White, 2900
Gonzalez v. City of Franklin, 1010, 1582, 1795
Gordon v. Milwaukee County, 1023
Gosse v. Navistar Int'l Transp. Corp., 3300
Gouger v. Hardtke, 2001
Gould v. American Family Mut. Ins. Co., 1021
Graass v. Westerlin & Campbell Co., 3244
Grana v. Summerford, 1141, 1350, 1354, 1355, 1580, 1585, 1590
Grand Trunk W. R.R. v. Lahiff, 3072
Granger v. Chicago M. & St. P. Ry., 3072
Gray v. Wisconsin Tel. Co., 1395
Greco v. Bueciconi Eng'r Co., 3200
Green Bay Broadcasting v. Redevelopment Authority, 8100, 8101
Green Bay-Wausau Lines, Inc. v. Mangel, 1355
Green Spring Farms v. Spring Green Farms, 1
Green v. Kaemph, 3062
Green v. Rosenow, 1756
Green v. Smith & Nephew AHP, Inc., 3200, 3260, 3260.1
Greene v. Farmers Mut. Auto Ins. Co., 1285
Greenville Coop. Gas Co. v. Lodesky, 1350
Greiten v. LaDow, 3240, 3260
Gremban v. Burke, 1010
Griebler v. Doughboy Recreational, Inc., 8020
Grimes v. Snell, 1840
Gritzner v. Michael R., 1005, 1013, 1397
Grognet v. Fox Valley Trucking Serv., 425
Grossenbach v. Devonshire Realty, 8012
Grosso v. Wittemann, 1380, 1381
Grube v. Daun, 1005, 1009, 2403
Gruen Indus., Inc. v. Biller, 3074
Gruenberg v. Aetna Ins. Co., 2761
Grunwald v. Halron, 1001
Grutzner v. Kruse, 1070
Grygiel v. Monches Fish & Game Club, Inc., 1810
Guardianship and Protective Placement of Shaw, 7060
Guardianship of Meyer, 1021
Guderyon v. Wisconsin Tel. Co., 1115, 1310
Guentner v. Gnagi, 1812
Guerra v. Manchester Terminal Corp., 2150
Guillaume v. Wisconsin-Minnesota Light & Power Co., 230
Gumz v. Northern States Power Company, 950
Gunderson v. Struebing, 2100
Gundlach v. Chicago & N. W. Ry., 1338

WIS JI-CIVIL CASES CITED

Gunning v. King, 1265
Gustavson v. O'Brien, 1023.5
Gutzman v. Clancy, 2006
Guzman v. St. Francis Hospital, Inc., 1707.1, 1897
Gyldenvand v. Schroeder, 2400, 2405, 2405.5, 2406

H

H.A. Friend & Co. v. Professional Stationery, Inc., 2200
Haag v. General Accident Fire & Life Assurance Corp., 1035
Habrich v. Industrial Comm'n, 4060
Habrouck v. Armour & Co., 1500, 3242
Haentz v. Toehr, 2402
Hafemann v. Milwaukee Auto Ins. Co., 1055
Hajec v. Novitzke, 2600
Hale v. Stoughton Hosp. Ass'n, Inc., 2780
Hales v. City of Wauwatosa, 1049
Hamed v. Milwaukee County, 1025
Hamilton v. Reinemann, 1140
Hamus v. Weber, 1048
Hanes v. Hermesen, 1045, 1096
Hannebaum v. DiRenzo & Bomier, 1900.4
Hannemann v. Boyson, 1023.8
Hannon v. Kelly, 3042
Hansberry v. Dunn, 1012
Hansche v. A. J. Conroy Co., Inc., 4005
Hansen v. Crown Controls Corp., 1723
Hansen v. Industrial Comm'n, 4045
Hansen v. New Holland North America, Inc., 1723
Hansen v. Texas Roadhouse, Inc., 1383
Hanson v. Binder, 1582
Hanson v. Matas, 1050
Hanson v. Valdivia, 1861
Hanz Trucking, Inc. v. Harris Bros. Co., 3057
Hardware Dealers Mut. Fire Ins. Co. v. Home Mut. Ins. Co., 1191
Hardware Mut. Casualty Co. v. Harry Crow & Son, Inc., 1105A, 1735
Hardy v. Hoefflerle, 1277
Hareng v. Blanke, 50, 195
Hargrove v. Peterson, 1730, 1750.2, 1767, 1795
Harrigan v. Gilchrist, 1
Harris v. Kelley, 1880
Harris v. Richland Motors, Inc., 4030, 4060
Hartman v. Buerger, 2500
Hartzheim v. Smith, 1045, 1080
Harvey v. Wheeler Transfer and Storage Co., 1803
Harvot v. Solo Cup, 1
Harweger v. Wilcox, 2400
Hastings Realty Corp. v. Texas Co., 8111
Hatch v. Smail, 1501
Hauer v. Union State Bank of Wautoma, 3044
Hausman v. St. Croix Care Center, 2750
Havens v. Havens, 1140
Hawarden v. The Youghioghney & Lehigh Coal Co., 2820
Hayton v. Appleton Machine Co., 4080
Heath v. Madsen, 1010
Heck & Paetow Claim Service, Inc. v. Heck, 4080
Heckel v. Standard Gateway Theater, 1900.4

WIS JI-CIVIL CASES CITED

Hegarty v. Beauchaine, 1023
Heikkila v. Standard Oil Co., 1080
Heilgeist v. Chasser, 2600
Heims v. Hanke, 1722A, 4025, 4030
Heldt v. Nicholson Mfg. Co., 1900.2
Helleckson v. Loiselle, 1750.2
Hellenbrand v. Bowar, 3200, 3230
Hellenbrand v. Hilliard, 1804
Helmbrecht v. St. Paul Ins. Co., 1023.5
Henricksen v. Mc Carroll, 1025.6
Henrikson v. Strapon, 1707.1
Henry v. United States, 2115
Henschel v. Rural Mut. Casualty Ins. Co., 1065
Henthorn v. M.G.C. Corp., 1125, 1145
Herbst v. Wuennenberg, 2100
Heritage Farms, Inc. v. Markel Ins. Co., 1757
Herman v. Milwaukee Children's Hosp., 1796, 1797, 1837, 1845, 1880
Hernandez v. United States, 2802
Herro v. Department of Natural Resources, 8100, 8101
Herro v. Northwestern Malleable Iron Co., 1861
Herro v. Steidl, 1870
Herzberg v. Ford Motor Co., 3260
Hess Bros., Inc. v. Great N. Pail Co., 3063, 3064, 3065
Hess v. Holt Lumber Co., 3014
Hett v. Ploetz, 2500
Heuer v. Wiese, 2200
Heuser v. Community Insurance Corp., 1380
Hibner v. Lindauer, 1112
Hickman v. Wellauer, 1804
Hicks v. Nunnery, 1023.5
Hietpas v. State, 8115
Hildebrand v. Carroll, 1025.7
Hilker v. Western Automobile Ins. Co., 2760
Hillman v. Columbia County, 2550
Hillstead v. Smith, 1114
Hilmes v. Stroebel, 2007
Hinrichs v. Dow Chemical Co., 2400
Hintz v. Mielke, 1255
Hipke v. Industrial Comm'n, 1900.4
Hodgson v. Wisconsin Gas & Light Co., 1051
Hoeft v. Friedel, 1075, 1600
Hoekstra v. Guardian Pipeline, 8100, 8101, 8102, 8120, 8135
Hoff v. Wedin, 1010
Hofflander v. St. Catherine's Hospital, 1007, 1021, 1385.5, 1902
Hoffman v. Danielson, 3076
Hoffman v. Dixon, 3220
Hoffman v. Halden, 2800
Hoffman v. North Milwaukee, 1049
Hoffman v. Pfingsten, 3022
Hoffman v. Red Owl Stores, Inc., 3020, 3074
Holbach v. Classified Ins. Corp., 1277
Holschbach v. Washington Park Manor, 8030
Holton v. Burton, 1023
Holytz v. Milwaukee, 2900, 8035
Holzem v. Mueller, 1045
Home Fire & Marine Ins. Co. v. Farmers Mut. Auto Ins. Co., 1155, 1157
Home Protective Services, Inc. v. ADT Security Services, Inc., 2769

WIS JI-CIVIL CASES CITED

Home Sav. Bank v. Gertenbach, 3020, 4015
Hommel v. Badger State Inv. Co., 1902
Hornback v. Archdiocese of Milwaukee, 1005
Horst v. Deere & Company, 3260, 3260.1
Hortman v. Becker Constr. Co., Inc., 1900.4, 1901, 1904
Household Fin. Corp. v. Christian, 2401, 2402
Hoven v. Kelble, 1023, 1024
Howard v. State Farm Mut. Auto Liab. Co., 1730
Howe v. Corry, 1076
Hrubes v. Faber, 1023
Huchting v. Engel, 1010
Huck v. Chicago, St. Paul M. & O. Ry., 1026.5, 3051
Huebner v. State, 2115
Hunt v. Clarendon Nat'l Ins. Service, Inc., 1025
Hunter v. Sirianni Candy Co., 1210
Husting v. Dietzen, 180
Hutching v. Engel, 2000
Hyer v. Janesville, 230
Hyland v. GCA Tractor & Equip. Co., 3200, 3205
Hynek v. Kewaunee, G.B. & W. Ry., 1405

I

Ianni v. Grain Dealers Mut. Ins. Co., 1750.1, 1760
Ide v. Wamser, 1090, 1506
Idzik v. Reddick, 4005
Illinois Cent. R.R. Co. v. Blaha, 3117
Illinois Steel Co. v. Bilot, 8060
Imark Industries, Inc. v. Arthur Young & Co., 1383, 1580, 8045
Imnus v. Wisconsin Pub. Ser. Corp., 1900.4
Ingram v. Rankin, 2201
In Matter of Mental Condition of C.J., 7050
In Interest of C.E.W., 180, 191
In Re Commitment of Dennis H., 7050
In Re Estate of Schaefer, 4080
In re Kelly M., 7050
In Re Paternity of M.J.B., 5001
In Re Paternity of Taylor, R.T., 5001
In Re Paternity of J.M.K., 5001
In re Estate of Sheppard, 3070
Insurance Co. of North Am. v. Cease Electric Inc., 400, 2400
Insurance Co. of North Am. v. Kriek Furriers, Inc., 1025.7
Irby v. State, 420
Irish v. Dean, 3049
Isgro v. Plankington Packing Co., 1265
Ivancevic v. Reagan, 3072

J

J. H. Clark Co. v. Rice, 2401, 2402
J. F. McNamara Corp. v. Industrial Comm'n, 4035
J.W. Cartage Co. v. Laufenberg, 1354, 1355
Jackson v. Robert L. Reisinger & Co., 180
Jacob v. West Bend Mut. Ins. Co., 1022.6, 3700, 4060
Jacobs v. Major, 1810
Jacobson v. Greyhound Corp., 1114
Jacobson v. Milwaukee, 305

WIS JI-CIVIL CASES CITED

Jacque v. Steenberg Homes, Inc., 1707.1, 1810
Jadofski v. Town Kemper Ins. Co., 2762
Jaeger v. Stratton, 1023
Jagmin v. Simonds Abrasive Co., 400, 1145
Jandre v. Wisconsin Injured Patients and Families Compensation Fund, 1023.1
Jandrt v. Milwaukee Auto Ins. Co., 205, 3072
Janke Const. Co., Inc. v. Balcan Materials Co., 3074
Jankee v. Clark County, 1007, 1021, 1385.5
Jeffers v. Nysse, 1707
Jenkinson v. New York Casualty Co., 3115
Jennings v. Lyons, 3062, 3066, 3067
Jensen v. Jensen, 1032
Jessup v. LaPin, 3090
Jewell v. Schmidt, 1825
John Doe 1 v. Archdiocese of Milwaukee, 2401
Johnson v. Agoncillo, 1023
Johnson v. Calado, 2605
Johnson v. Cintas Corp. No. 2., 115, 1007, 1014
Johnson v. Fireman's Fund Indem. Co., 1155
Johnson v. Heintz, 50, 1710, 1722A, 1723
Johnson v. Holmen Canning Co., 4035
Johnson v. McDermott, 1113
Johnson v. Misericordia Community Hosp., 1384, 1760
Johnson v. Pearson Agri-Systems, Inc., 1796
Johnson v. Prideaux, 1140
Johnson v. Ray, 205, 1506, 1700, 2008, 2155
Johnson v. St. Paul & W. Coal Co., 1835, 1845
Jolin v. Oster, 1
Jonas v. State, 8104, 8107
Jones v. Alfred H. Mayer Co., 2150
Jones v. Fisher, 1707
Jones v. Jenkins, 3051
Jones v. Pittsburgh Plate Glass Co., 3222
Jones v. State, 63
Joplin v. John Hancock Mut. Life Ins. Co., 3057
Jorgenson v. Northern State Power Co., 1395
Jungbluth v. Hometown, Inc., 2771
Justmann v. Portage County, 8102, 8103, 8120

K

K & S Tool & Die Corp. v. Perfection Mach. Sales, Inc., 2418
Kablitz v. Hoeft, 1715, 1720
Kaesler, Adm'r v. Milwaukee Elec. Ry. & Light Co., 1880
Kaiser v. Board of Police & Fire Commissioners of Wauwatosa, 2750
Kalkopf v. Donald Sales & Mfg. Co., 1019, 3260
Kamp v. Curtis, 4035
Kamrowski v. State of Wis., 8120
Kansas City Star Co. v. ILHR Dep't, 3045
Karls v. Drake, 2401, 2402
Karsteadt v. Phillip Gross H. & S. Co., 3200, 3246
Kathan v. Comstock, 3220
Kaufman v. Postle, 1143
Kaufman v. State Street Ltd. Partnership, 1900.4
Keegan v. Chicago, M., St. P. & P. R.R., 1336, 1403, 1405
Kehl v. Economy Fire & Casualty Co., 1707.1
Kehm Corp. v. United States, 3060

WIS JI-CIVIL CASES CITED

Keith v. Worcester & D. V. St. R.R., 1050
Keithley v. Keithley, 1885
Kelley v. Ellis, 3022
Kelley v. Hartford Casualty Ins. Co., 1024
Kelley v. State, 195
Kellogg v. Chicago & N.W. Ry., 1030
Kelly v. Berg, 1007.5, 1105A
Kempf v. Boehring, 1014
Kempfer v. Automated Finishing, Inc., 2750
Kempfer v. Bois, 1140
Ken-Crete Prod. Co. v. State Highway Comm'n, 8100, 8101, 8103
Kennedy-Ingalls Corp. v. Meissner, 3200, 3211, 3225, 3230
Kenwood Equip., Inc. v. Aetna Ins. Co., 110
Kerkman v. Hintz, 1023, 1023.8, 1023.9
Kerl v. Rasmussen, 4025, 4030, 4040, 4055, 4060
Kernz v. J.L. French Corp., 3010
Kerwin v. Chippewa Shoe Mfg. Co., 1500
Kettner v. Wausau Ins. Co., 4060
Kiefer v. Fred Howe Motors, Inc., 2000
Killeen v. Parent, 2401, 2402
Kim v. American Family Mut. Ins. Co., 1800
Kimble v. Land Concepts, Inc., 1707.1
Kincaide v. Hardware Mut. Casualty Co., 1144
Kincannon v. National Indem. Co., 1705, 1797
Kink v. Combs, 410
Kinsman v. Panek, 1310
Kirby v. Corning, 4027
Klassa v. Milwaukee Gas Light Co., 1511
Kleckner v. Great Am. Indem. Co., 325
Kleeman v. Chicago & N.W.R. Co., 4035
Kleinke v. Farmers Coop. Supply & Shipping, 1510
Kleist v. Cohodas, 1315
Kleven v. Cities Serv. Oil Co., 3086
Kline v. Johanneson, 1120
Klinefelter v. Ditch, 8060
Klingbeil v. Saucerman, 1023.5
Klipstein v. Raschein, 205
Kluck v. State, 2115
Klug v. Flambeau Plastics Corp., 3049
Klug v. Sheriffs, 3026
Knapke v. Grain Dealers Mut. Ins. Co., 1904, 3057
Kneeland-McClurg Lumber Co. v. Industrial Comm'n, 4060
Knief v. Sargent, 1023
Knoke v. City of Monroe, 8035
Knowles v. Stargel, 1265
Knutson v. Fenelon, 1840
Koback v. Crook, 1009
Kochanski v. Speedway Superamerica, 410, 1900.4
Koehler v. Thiensville State Bank, 1145
Koehler v. Waukesha Milk Co., 1855
Koele v. Radue, 1760
Koepsell's Olde Popcorn Wagons, Inc. v. Koepsell's Festival Popcorn Wagons, Ltd., 2790
Koetting v. Conroy, 1391
Koffman v. Leichtfuss, 1756
Kohler v. Dumke, 1582
Kohloff v. State, 63
Kohls v. Glassman, 3118

WIS JI-CIVIL CASES CITED

Kojis v. Doctors Hosp., 2900
Kolbeck v. Rural Mut. Ins. Co., 1806, 3117
Kolpin v. Pioneer Power & Light, 950, 1019
Koltka v. PPG Indus., Inc., 1870
Korenak v. Curative Workshop Adult Rehabilitation Center, 1900.4
Korth v. American Family Ins. Co., 1837
Kosnar v. J. C. Penney Co., 1900.4
Kottka v. PPG Indus., Inc., 1815
Kowalczyk v. Rotter, 8045
Kowalke v. Farmers Mut. Auto Ins. Co., 180, 1032, 1052, 1140, 1705, 1760, 1767, 1768
Kowalke v. Milwaukee Elec. Ry. & Light Co., 3072
Kozlowski v. John E. Smith's Sons Co., 3262
Kraft v. Charles, 1285
Kraft v. Steinhafel, 1023.5, 4035
Kraft v. Wodill, 2401
Krainz v. Strle, 1114
Kramer v. Alpine Valley Resort, Inc., 3074
Kramer v. Chicago, M., St. P. & P. Ry., 1501, 1796
Kramer v. Hayward, 3024
Kramschuster v. Shawn E., 1014
Kranzush v. Badger State Mut. Casualty Co., 2760, 2761
Kraskey v. Johnson, 1070, 1155, 1157
Kraus v. Mueller, 8060
Kraus v. Wisconsin Life Ins. Co., 3061
Krause v. Milwaukee Mut. Ins. Co., 230, 1105A
Krause v. V. F. W. Post 6498, 1900.4, 1904, 3290
Krause v. Western Casualty & Sur. Co., 4040
Krebsbach v. Miller, 3112
Kremer v. Rule, 1805
Kreyer v. Driscoll, 3052
Krieg v. Dayton-Hudson Corp., 2600, 2605
Krolikowski v. Chicago & N.W. Transp. Co., 1403
Kruck v. Wilbur Lumber Co., 1840
Kruckenberg v. Krukar, 8060
Krudwig v. Kaepke, 2007
Krueger v. AllEnergy Hixton, LLC, 1920
Krueger v. Steffen, 1800, 1801, 1805, 3725
Krueger v. Tappan, 358
Krueger v. Winters, 180
Kruse v. Horlamus Indus., 200, 205, 1008, 8060
Kryzko v. Gaudynski, 4025
Kuehn v. Kuehn, 200, 205
Kuehnemann v. Boyd, 1023
Kuentzel v. State Farm Mut. Auto Ins. Co., 1105A
Kuhlman, Inc. v. G. Heileman Brewing Co., Inc., 1730, 1731, 1806
Kujawski v. Arbor View Health Care Center, 1023.7, 1385
Kukuska v. Home Mut. Hail-Tornado Ins. Co., 3016
Kurz v. Chicago, M. St. P. & P. Ry., 1408, 1410, 1413
Kurz v. Collins, 3115, 3116
Kutsugeras v. Avco Corp., 1723
Kuzel v. State Farm Mut. Ins. Co., 1610

L

L.L.N. v. Clauder, 1383
L. L. Richards Mach. Co. v. McNamara Motor Express, 1026.5, 1804
La Fave v. Lemke, 1120

WIS JI-CIVIL CASES CITED

La Fleur v. Mosher, 1511
Laabs v. Bolger, 8060
LaChance v. Thermogas Co. of Lena, 1760
LaCombe v. Aurora Medical Group, Inc., 1023
LaCrosse Plow Co. v. Brooks, 3202
LaCrosse Plow Co. v. Helgeson, 3202
Ladd v. Uecker, 2500
Ladewig v. Tremmel, 1390, 1397
Laehn Coal and Wood Co. v. Koehler, 2401, 2402
Lagerstrom v. Myrtle Werth Hospital - Mayo Health System, 1757, 1850
Lake to Lake Dairy Coop. v. Andrews, 1070
Lambert v. Hein, 2400
Lambert v. Wensch, 1815, 1816
Lambrecht v. Estate of Kaczmarczyk, 1021.2, 1145
Lamming v. Galusha, 1920
Lampertius v. Chmielewski, 1075
Landess v. Borden, Inc., 3074
Landrey v. United Serv. Auto Ass'n, 1035
Langhoff v. Milwaukee & Pr. du Ch. R. Co., 1030
Larry v. Commercial Union Ins. Co., 1381
Larsen v. Wisconsin Power & Light Co., 1003
Larson v. Superior Auto Parts, 3018
Lathan v. Journal Co., 2500, 2505
Laughland v. Beckett, 2500
Laurent v. Plain, 1600
Lauson v. Fond du Lac, 1310, 1315, 1320
Lautenschlager v. Hamburg, 1715
Lawlis v. Thompson, 3028
Lawrence v. E. W. Wylie Co., 1090
Lawrence v. Jewell Cos., Inc., 2500
Layton School of Art & Design v. WERC, 205
Le Mere v. Le Mere, 1075
Le Sage v. Le Sage, 1600
Lecander v. Billmeyer, 1024
Lechner v. Ebenreiter, 4015, 4050
Leckwe v. Ritter, 1096
Leckwee v. Gibson, 1055, 1065, 1070, 1105A, 1141, 1153, 1175
Lee v. Bielefeld, 2400
Lee v. Lord, 4050
Lee v. Milwaukee Gas Light Co., 8030
Lee v. National League Baseball Club, 8045
Legue v. City of Racine, 1031
Leibl v. St. Mary's Hosp. of Mil., 1766
Leipske v. Guenther, 1391, 8112
Leitinger v. DBart, Inc., 1756
Leitner v. Milwaukee County, 1900.4, 1904
Lemacher v. Circle Constr. Co., 1022.2
LeMay v. Oconto, 1049
Lembke v. Farmers Mut. Auto Ins. Co., 1285
Leonard v. Employers Mut. Liab. Ins. Co., 1155, 1157
Lestina v. West Bend Mut. Ins. Co., 2020
Leuchtenberg v. Hoeschler, 3014
Levin v. Perkins, 3020
Lewandowski v. Continental Casualty Co., 195, 1023.5
Lewandowski v. Preferred Risk Mut. Ins. Co., 261
Lewis v. Coursolle Broadcasting, 2511
Lewis v. Leiterman, 1075, 1325, 1610

WIS JI-CIVIL CASES CITED

Lewis v. Physicians Ins. Co., 1023, 4030
Libowitz v. Lake Nursing Home, Inc., 3086
Liebe v. City Fin. Corp., 2780
Lieberman v. Weil, 3083
Lievrouw v. Roth, 180, 1105A, 1707.1, 1710
Ligman v. Bitker, 1337
Liles v. Employers Mut. Ins. of Wausau, 1055
Lincoln v. Claflin, 2802
Lind v. Lund, 1070
Linden v. Cascade Stone Co., 2400
Linden v. City Car Co., 4035
Linden v. Miller, 1000
Lindloff v. Ross, 1023
Lippert v. Chicago & N. W. Ry. Co., 8104, 8107
Lisowski v. Milwaukee Auto Mut. Ins. Co., 1045, 1050
Listman Mill Co. v. William Listman Milling Co., 2790
Little v. Maxam, Inc., 3260
Lloyd v. S. S. Kresge Co., 1901
Lobermeier v. General Tel. Co. of Wis., 410, 1730
Loeb v. Board of Regents, 8100, 8140
Londre v. Continental Western Ins. Co., 3110
Lorbecki v. King, 180
Loser v. Libal, 1730
Lovesee v. Allied Dev. Corp., 1580, 1585, 1590
Lubner v. Peerless Ins. Co., 410
Luby v. Bennett, 2605
Lueck v. Heisler, 2100
Luessen v. Oshkosh Elec. Light & Power Co., 1890
Lukens Iron & Steel Co. v. Hartmann-Greiling Co., 3058
Lumbermen's Mut. Cas. Co. v. S. Morgan Smith Co., 3200
Lund v. Keller, 2200
Lundin v. Shimanski, 1707
Lundquist v. Western Casualty & Sur. Co., 410, 1065, 1090
Luther Hosp. v. Garborg, 1825
Lutz v. Shelby Mut. Ins. Co., 1105A, 1750.2, 1767, 1768

M

M & I Marshall & Ilsley Bank v. Pump, 2770
M. Capp Mfg. Co. v. Moland, 1026.5
MS Real Estate Holdings, LLC v. Fox Family Trust, 3049
Maben v. Rankin, 1742
Macherey v. Home Ins. Co., 205
Machesky v. Milwaukee, 3012
Maci v. State Farm Fire & Casualty Co., 8020
Mack v. Decker, 1045
Mack Trucks, Inc. v. Sunde, 3200
Mackensie v. Miller Brewing Co., 2401
Mackenzie Fandrey v. American Family Mut. Ins. Co., 1500
MacLeish v. Boardman Clark LLP, 1023.5
Madison Metropolitan Sewerage Dist. v. Committee, 1922
Madison Trust Co. v. Helleckson, 2401, 2402
Madison v. Geier, 205, 1107
Madix v. Hockgreve Brewing Co., 4060
Maeder v. Univ. of Wisconsin-Madison, 2750
Magin v. Bemis, 1070
Maichle v. Jonovic, 2006

WIS JI-CIVIL CASES CITED

Mair v. Trollhaugen Ski Resort, 1900.4
Maitland v. Twin City Aviation Corp., 8112
Majestic Realty Corp. v. Brant, 1022.6, 8030
Majorowicz v. Allied Mut. Ins. Co., 2760
Malco v. Midwest Aluminum Sales, 1707
Maleki v. Fine-Lando Clinic, 2800, 2820
Malik v. American Family Ins. Co., 1391
Maloney v. Wisconsin Power, Light & Heat Co., 1796, 1861
Malzewski v. Rapkin, 2400, 2401, 2402
Management Computer Serv. v. Hawkins, Ash, Baptie, 3010, 3051
Mandell v. Bryam, 4050
Maniaci v. Marquette Univ., 2100, 2600, 2605, 2620
Mann v. Reliable Transit Co., 1320
Manning v. Galland-Henning Pneumatic Malting Drum Mfg. Co., 3046
Manzanarez v. Safeway Stores, Inc., 2150
Marathon County v. Zachary W., 7050
Mark McNally v. Capital Cartage, Inc., 3086
Market Street Assoc. Ltd. Ptrshp. v. Frey, 3044
Marlatt v. Western Union Tel. Co., 4050
Marmolejo v. DILHR, 4035, 4045
Marquez v. Mercedes-Benz USA, 3300
Marsh Wood Prod. Co. v. Babcock & Wilcox Co., 3200, 3240
Marshfield Clinic v. Discher, 1825
Martell v. National Guardian Life Ins. Co., 3040
Martens v. Reilly, 2800
Martin v. Outboard Marine Corp., 2500, 2501, 2516
Maskrey v. Volkswagenwerk Aktiengesellschaft, 1723, 1760, 1797
Maslow Cooperage Corp. v. Weeks Pickle Co., 202, 1705, 3700
Mastercraft Paper Co. v. Consolidated Freightways, 1026.5
Matson v. Dane County, 1012
Matter of Commitment of C.S., 7050
Matter of Marks v. Gray, 4045
Matteson v. Rice, 2400, 3220
Matthews v. Schuh, 1190.5
Matuschka v. Murphy, 1023
Maurin v. Hall, 1023, 1870, 1895, 1897
May v. Skelly Oil Co., 1580, 1900.4
Mayo v. Wisconsin Injured Patients and Families Compensation Fund, 1023, 1870, 1895, 1897
MBS-Certified Public Accountants, LLC v. Wisconsin Bell, Inc., 2418
McAleavy v. Lowe, 3200
McAllister v. Kimberly-Clark Co., 1707
McCaffery v. Minneapolis, St. P. & S.S.M. Ry., 1796
McCarthy v. Thompson, 325
McCartie v. Muth, 1766
McCarty v. Weber, 215
McCluskey v. Steinhorst, 2005, 2008
McConaghy v. McMullen, 2006
McConville v. State Farm Mut. Auto Ins. Co., 1047, 1047.1 1500, 1591, 1592
McCrossen v. Nekoosa Edwards Paper Co., 1051.2, 1105A, 1705, 1885, 1890, 1892
McDonnell v. Hestnes, 3115, 3116
McEvoy v. Group Health Cooperative, 2761
McGaw v. Wassman, 265
McGee v. Kuchenbaker, 1285
McGowan v. Story, 100
McGuiggan v. Hiller Bros., 1580, 1585, 1590
McKone v. Metropolitan Life Ins. Co., 4020
McLaughlin v. Chicago, M. St. P. & P. Ry., 1410

WIS JI-CIVIL CASES CITED

McLean v. McLean, 3020
McLuckie v. Chicago, M. St. P. & P. Ry., 1408
McMahon v. St. Croix Falls Sch. Dist., 1385.5
McManus v. Donlin, 1023
McNally v. Goodenough, 1900.4, 1901
McNamara v. Village of Clintonville, 1720
McNeil v. Jacobson, 1005, 1009
Mead v. Ringling, 1812
Medford Lumber Co. v. Industrial Comm'n, 4060
Medley v. Trenton Inv. Co., 1022.6, 4010
Meeme Mut. Home Protective Fire Ins. Co. v. Lorfeld, 3072
Megal v. Green Bay Area Visitor & Convention Bureau, et al., 1900.4
Meier v. Meurer, 2500
Meihost v. Meihost, 1381
Meke v. Nicol, 1707
Memphis v. Greene, 2150
Mendelson v. Blatz Brewing Co., 2780, 3068
Menge v. State Farm Mut. Automobile Ins. Co., 1105A
Menominee River Boom Co. v. Augustus Spies Lumber & Cedar Co., 3020
Meracle v. Children's Serv. Soc., 1705
Merco Distrib. Corp. v. Commercial Police Alarm Co., Inc., 1500
Merco Distrib. Corp. v. O & R Engines, Inc., 110
Merkle v. Behl, 1505
Merkley v. Schramm, 1050
Merriman v. Cash-Way, Inc., 1900.4
Mertens v. Lake Shore Yellow Cab & Transfer Co., 1070
Meshane v. Second Street Co., 1707
Metcalf v. Consolidated Badger Coop., 1582
Methodist Manor Health Center, Inc. v. Py, 2200
Metropolitan Sav. & Loan Ass'n v. Zuelke's, Inc., 2200, 2201
Metropolitan Ventures v. GEA Assoc., 3044
Metz v. Medford Fur Foods, 3200, 3260
Metz v. Rath, 1105A
Metzinger v. Perry, 1708
Meurer v. ITT Gen. Controls, 145
Meyer v. Ewald, 2600, 2605, 2610, 2611
Meyer v. Norgaard, 1023.6
Meyer v. Val-Lo-Will Farms, 1051.2
Meyers v. Matthews, 1600, 4001, 4030
Meyers v. Wells, 3030
Mezera v. Pahmeier, 1354
Michaels v. Green Giant Co., 1760
Mid-Continent Refrigerator Co. v. Straka, 1707
Midwestern Helicopter v. Coolbaugh, 2200, 2201
Mikaelian v. Woyak, 1047
Milaeger Well Drilling Co. v. Muskego Rendering Co., 3058
Milbauer v. Transport Employes' Mut. Benefit Soc'y, 260, 265
Miller & Rose v. Rich, 4060
Miller v. Conn, 3074
Miller v. Epstein, 4035
Miller v. Joannes, 1
Miller v. Keller, 1010
Miller v. Kim, 1023
Miller v. Neale, 1806
Miller v. Paine Lumber Co., 1900.2
Miller v. Tainter, 1880
Miller v. Wadkins, 2900

WIS JI-CIVIL CASES CITED

Miller v. Wal-Mart Stores, Inc., 1383
Millonig v. Bakken, 215, 1000, 1112, 1145, 1285
Milwaukee & Suburban Transp. Corp. v. Milwaukee County, 106
Milwaukee & Suburban Transp. Corp. v. Royal Transit Co., 1112
Milwaukee Boiler Co. v. Duncan, 3202
Milwaukee Constructors II v. Milwaukee Metro Sewerage District, 400
Milwaukee County v. Schmidt, Gardner, and Erickson, 1023.5
Milwaukee Metro. Sewerage Dist. v. City of Milwaukee, 1920, 1922, 1924, 1926, 1928, 1930, 1932
Milwaukee Mirror & Art Glass Works v. Chicago, 1025.7
Milwaukee Rescue Mission, Inc. v. Redevelopment Authority of the City of Milwaukee 8135
Milwaukee Tank Works v. Metals Coating Co., 100
Milwaukee Transport Services, Inc. v. Family Dollar Stores of Wisconsin, Inc. 1605, 4035, 4040
Milwaukee Trust Co. v. Milwaukee, 305
Milwaukee Western Fuel Co. v. Industrial Commission, 4035, 4045
Miranovitz v. Gee, 2401, 2402
Misiewicz v. Waters, 1105A
Mittelstadt v. Hartford Accident & Indem. Co., 1000
Mittleman v. Nash Sales, Inc., 4035
Mixis v. Wisconsin Pub. Serv. Comm'n, 1145
Modern Materials v. Advanced Tooling Spec., 2800
Modl v. National Farmers Union Property & Casualty Co., 1145
Moe v. Benelli U.S.A. Corp., 2769
Mohs v. Quarton, 3700
Mondl v. F.W. Woolworth, 1048, 1902
Monrean v. Eastern Wis. Ry. & Light Co., 1012
Monsivais v. Winzenried, 8012
Moore v. Relish, 1025.5
Moore v. State, 415
Moran v. Quality Aluminum Casting Co., 1815, 2900
Morden v. Continental AG, 3240
Morgan v. Pennsylvania Gen. Ins. Co., 1500
Moritz v. Allied Mut. Fire Ins. Co., 1820
Morris F. Fox & Co. v. Lisman, 3014
Morris v. Resnick, 4080
Morris v. Juneau County, 8035
Mortgage Associates v. Monona Shores, 1
Moulton v. Kershaw, 3012
Mowry v. Badger State Mut. Casualty, 2760
Mt. Pleasant v. Hartford Accident & Indemnity, 3118
Mueller v. Harry Kaufmann Motorcars, Inc., 2401, 2418, 3068
Mueller Real Estate Inv. Co. v. Cohen, 1804
Mulder v. Acme-Cleveland Corp., 1383, 1900.2
Mullen v. Larson-Morgan Co., 1900.4
Mullen v. Reinig, 110
Mullen v. Walczak, 1511
Murawski v. Brown, 1402
Murphy v. Nordhagen, 1023.8, 1023.9
Murray v. Holiday Rambler, Inc., 145, 3201, 3205, 3220, 3222
Murray v. Yellow Cab Co., 1000
Muscoda Bridge Co. v. Grant County, 8100
Muskevitch-Otto v. Otto, 3110
Mustas v. Inland Constr. Inc., 315, 1901
Myhre v. Hessey, 2605

WIS JI-CIVIL CASES CITED

N

Naden v. Johnson, 3700
Narloch v. State of Wis. Dept of Transp., 8102, 8103
Nashban Barrel & Container Co. v. Parsons Trucking Co., 1730, 1800, 1801 1804
National Auto Truckstops, Inc. v. WISDOT, 8111, 8120, 8130, 8135
National Farmers Union Property & Casualty v. Maca, 3110
Navine v. Peltier, 3034
Neas v. Siemens, 2400, 2401, 2402
Neave v. Arntz, 3220
Nees v. Weaver, 3052
Neff v. Barber, 1
Neitzke v. Kraft-Phenix Dairies, Inc., 1051, 1900.4, 1902
Nelsen v. Farmers Mut. Auto Ins. Co., 3010, 3032, 3050
Nelson v. Boulay Bros. Co., 1803, 3208
Nelson v. Davidson, 1023.6
Nelson v. Hansen, 3290
Nelson v. Pauli, 100
Nelson v. Travelers Ins. Co., 1310
Nesbitt v. Erie Coach Co., 3074
Nessler v. Nowicki, 1155, 1157
Nestle's Food Co. v. Industrial Comm'n, 4030, 4060
Neuman v. Evans, 155
Neumann v. Industrial Sound Engineering, Inc., 2600, 2605, 2610, 2611
New Amsterdam Casualty Co. v. Farmers Mut. Auto Ins. Co., 325
New Dells Lumber Co. v. Chicago St. P. M. & O. R. Co., 8135
New York Times Co. v. Sullivan, 2500, 2511
Nickel v. Hardware Mut. Casualty Co., 1815
Niedbalski v. Cuchna, 1352
Nielsen v. Spencer, 1013
Nimlos v. Bakke, 1756
Nimmer v. Purtell, 125
Noffke v. Bakke, 2020
Nolop v. Skemp, 1795
Nolop v. Spettel, 3057
Nommensen v. American Cont. Ins. Co., 200
Nordahl v. Peterson, 1885, 3112
Norfolk & Western Ry. Co. v. Liepelt, 1735
Norfolk Monument Co. v. Woodlawn Memorial Gardens, Inc., 2804
North Highland Inc. v. Jefferson Mach. & Tool Inc., 2800
Northern Supply Co. v. Vanguard, 3207
Northland Ins. Co. v. Avis Rent-a-Car, 1112
Northrop v. Opperman, 8060
Northwest Capital Corp. v. Kimpel, 3070
Northwest Gen. Hosp. v. Yee, 1023
Northwestern Blaugas Co. v. Guild, 3202
Northwoods Dev. Corp. v. Klement, 8060
Norton v. Kearney, 3040
Nothem v. Berenschot, 1140
Novell v. Migliaccio, 2401, 2418
Novick v. Becker, 2605
Novitzke v. State, 265
Nowaczyk v. Marathon County, 8100, 8135
Nowatske v. Osterloh, 1023, 1023.5, 1023.7, 1023.8, 1023.14, 1024, 1384

WIS JI-CIVIL CASES CITED

O

O'Brien v. Chicago & N.W. Ry., 215
O'Connell v. Old Line Life Ins. Co., 1500
O'Shea v. Lavoy, 1032
Odgers v. Minneapolis, St. P. & S. S. M. Ry., 1336
Ody v. Quade, 1140
Oelke v. Earle, 1191
Ogle v. Avina, 1060, 1107, 1153, 1175
Ogodziski v. Gara, 1707
Ohio Elec. Co. v. Wisconsin-Minnesota Light and Power Co., 3202
Ohrmund v. Industrial Comm'n, 4040
Ohrmundt v. Spiegelhoff, 2400, 2402
Oleson v. Fader, 2006.5
Olfe v. Gordon, 1023.5
Ollerman v. O'Rourke Co., Inc., 2405, 2405.5
Ollhoff v. Peck, 1391
Ollman v. Wisconsin Health Care Liab. Ins. Plan, 405
Olsen v. Milwaukee Waste Paper Co., 1080
Olsen v. Moore, 4035
Olson v. Red Cedar Clinic, 2550
Olson v. Siordia, 1585, 1590
Olson v. Whitney Bros. Co., 1900.4
Olson v. Williams, 100
Onderdonk v. Lamb, 2800
Onsrud v. Paulsen, 3020
Orlowski v. State Farm Mut. Auto Ins. Co., 1756, 1757
Ormond v. Wisconsin Power & Light Co., 1025
Osborne v. Montgomery, 1005, 1384, 1500, 1835
Otto v. Cornell, 1806, 8060
Outagamie County v. Michael H., 7050

P

Pachowitz v. LeDoux, 2550
Pacific Mut. Life Ins. Co. v. Haslip, 1707
Padley v. Lodi, 1910
Pagelsdorf v. Safeco Ins. Co. of Am., 8020
Pallange v. Mueller, 3022
Palmer v. Smith, 2006
Palsgraf v. Long Island Railroad Co., 1005
Pamperin v. Milwaukee Mutual Ins., 3110
Panzer v. Hesse, 1260
Papacosta v. Papacosta, 1105A
Papenfus v. Shell Oil Co., 145
Papke v. American Auto Ins. Co., 1870
Pappas v. Jack O. A. Nelson Agency, Inc., 325
Parchia v. Parchia, 1006
Parks v. Wisconsin Cent. R. Co., 8102, 8103, 8105
Parrish v. Phillips, 3117
Patterman v. Patterman, 1390, 1391
Patterson v. Edgerton Sand & Gravel Co., 1051, 1080, 1096
Paul v. Hodd, 1000
Paulson v. Madison Newspapers, 1049
Paulson v. Olson Implement Co., Inc., 3211
Pavelski v. Roginski, 3112
Pawlack v. Mayer, 1013

WIS JI-CIVIL CASES CITED

Pawlowski v. American Family Mut. Ins. Co., 1390
Payne v. Milwaukee Sanitarium Found., Inc., 1384, 1385, 1385.5
Payne v. State, 100
Peacock v. Wisconsin Zinc Co., 1806
Pedek v. Wegemann, 1352, 1795
Peeples v. Sargent, 1730, 1815
Pence v. Slate, 1023.5
Pennell v. Am. Family Mut. Ins. Co. 1500
Pennington v. United Mine Workers of Am., 2804
Peot v. Ferraro, 1705, 1707.1, 1870, 1885, 1890, 1895, 1897
Perlick v. Country Mut. Casualty Co., 3057
Perpignani v. Vonasek, 200, 205, 260
Perry Creek C. Corp. v. Hopkins Ag. Chem. Co., 3200
Peter M. Chalik & Assoc. v. Hermes, 3086, 3740
Peters v. Hall, 2600, 2605
Peters v. Holiday Inns, Inc., 8050
Peters v. Zimmerman, 1505, 1720
Petersen v. Pilgrim Village, 3012
Peterson v. Sinclair Refining Co., 1022.6
Peterson v. Volkswagen of America, Inc., 3310
Peterson v. Warren, 3117, 3118
Petkus v. State, 8115
Petoskey v. Schmidt, 1900.4
Pettera v. Collins, 1070
Pettric v. Gridley Dairy Co., 1900.4
Petzel v. Valley Orthopedics Ltd., 1024
Pfeifer v. Standard Gateway Theater, Inc., 230, 1500, 8045
Pfister v. Milwaukee Free Press Co., 4050
Phaneuf v. Industrial Comm'n, 4030, 4060
Phelps v. Physicians Ins. Co. of Wisconsin, Inc., 1023, 1510
Philadelphia Newspapers, Inc. v. Hepps, 2500, 2501, 2505, 2505A
Philip Morris USA v. Williams, 1707.1, 1707.2
Phoenix Ins. Co. v. Wisconsin S. Gas Co., 8051
Physicians Plus v. Midwest Mutual, 1920, 1922, 1924, 1926, 1928, 1930, 1932
Pickett v. Travelers Indem. Co., 1056
Pierce v. American Family Ins. Co., 1897
Pierce v. Colwell, 1023.5
Pierce v. Physicians Ins. Co. of Wis., 1510, 1511
Pierz v. Gorski, 8060
Pizzo v. Wiemann, 3200
Plaintikow v. Wolk, 2401
Plante v. Jacobs, 3052, 3700
Pleasure Time, Inc. v. Kuss, 3700
Pleucner v. Industrial Comm'n, 4060
Plog v. Zolper, 1055, 1060, 1065, 1141, 1153, 1175, 1195, 1325, 1337, 1354
PMT Machinery Sales, Inc. v. Yama Seiki USA, Inc., 2769
Pokrojac v. Wade Motors, Inc., 3205
Polar Mfg. Co. v. Integrity Mut. Ins. Co., 3105
Poling v. Wisconsin Physicians Serv., 2761
Pollock v. Vilter Mfg. Corp., 2600
Polzin v. Helmbrecht, 2500, 2511, 2513, 2520
Poneitowcki v. Harres, 1032
Poole v. State Farm Mut. Auto Ins. Co., 1280
Portee v. Jaffee, 1510
Porter v. Ford Motor Co., 3300
Poston v. Burns, 2551
Potter v. Potter, 1895

WIS JI-CIVIL CASES CITED

Prange v. Rognstad, 1855, 1885
Pressure Cast Prod. Corp. v. Page, 3710
Price v. Ross, 2200, 2200.1
Price v. Shorewood Motors, 4045
Prill v. Hampton, 1051, 1880
Prinsen v. Russos, 3200
Prisuda v. General Casualty Co. of Am., 3112, 4020
Pritchard v. Liggett & Myers Tobacco Co., 3230
Production Credit Ass'n v. Equity Coop. Livestock, 2200
Production Credit Ass'n v. Nowatzski, 2200, 2201
Prunty v. Schwantes, 1890
Przybyla v. Przybyla, 2725
Przybylski v. Von Berg, 4015
Puccio v. Mathewson, 1120
Puhl v. Milwaukee Automobile Ins. Co., 1055, 1090, 1153, 1825
Pumorlo v. Merrill, 405, 1049
Pure Milk Prod. Coop. v. National Farmers' Org., 2780

Q

Quady v. Sickl, 1315
Quinlan v. Coombs, 3110

R

Raaber v. Brzoskowski, 1225
Rabata v. Dohner, 260, 265
Rabe v. Outagamie County, 1880
Rabideau v. City of Racine, 1510, 2725
Rademann v. State of Wisconsin Dept. of Transp., 8105, 8120, 8135
Radloff v. National Food Stores, Inc., 8045
Radue v. Dill, 2800, 2820
Raim v. Ventura, 1019
Rambow v. Wilkins, 315
Randall v. Minneapolis, St. P. & S.S.M. Ry., 1412
Ranous v. Hughes, 2500, 2507, 2552
Rasmussen v. Garthus, 1010, 1582
Raszeja v. Brozek Heating & Sheet Metal Corp., 1007
Raymaker v. American Family Mut. Ins. Co., 8020
Reber v. Hanson, 1012
Recreatives, Inc. v. Myers, 3201, 3205, 3210
Red Top Farms v. State Dept. of Transp., Div. of Highways, 8115
Reda v. Sincaban, 2400, 2402
Reddington v. Beefeaters Tables, Inc., 1901, 8012
Redepenning v. Dore, 1705, 1758, 1767, 1768, 1796, 1820, 1861, 1880, 1885, 1890, 1892
Reed v. Keith, 2513
Regas v. Helios, 2200
Reicher v. Rex Accessories Co., 230
Reid v. Milwaukee Air Pump Co., 4027
Reiher v. Mandernack, 8040
Reinke v. Chicago, M. St. P. & P. Ry., 1408, 1409
Reinke v. Woltjen, 1760
Reiter v. Dyken, 1580
Renk v. State of Wis., 8102, 8103
Repinski v. Clintonville Sav. & Loan Ass'n, 3710
Reserve Supply Co. v. Viner, 1500
Reshan v. Harvey, 1055

WIS JI-CIVIL CASES CITED

Resseguie v. American Mut. Liab. Ins. Co., 315
Retzlaff v. Soman Home Furnishings, 1500
Reuhl v. Uszler, 1315
Reyes v. Greatway Ins. Co., 1707.1
Reyes v. Lawry, 155, 1591, 1595
Richards v. Badger Mut. Ins. Co., 1740
Richards v. Mendivil, 1024
Rigby v. Herzfeldt-Phillipson Co., 4050
Riley v. Chicago & N.W.Ry., 1402
Rineck v. Johnson, 1870
Rinehart v. Whitehead, 2006, 2007
Ritter v. Farrow, 2790
Robinson v. Briggs Transp. Co., 1115, 1120
Robinson v. City of West Allis, 2008
Robinson v. Kolstad, 1880
Rock County v. Industrial Comm'n, 4040
Rockweit v. Senecal, 8020
Roeske v. Diefenbach, 410
Roeske v. Schmitt, 1090
Rolph v. EBI Cos., 3240, 3260
Romberg v. Nelson, 1047.1, 1075
Root v. Saul, 2006
Rosche v. Wayne Feed, Continental Grain, 1803, 1806
Rosen v. Milwaukee, 8120
Ross v. Faber, 3222
Ross v. Martini, 3110
Rossow v. Lathrop, 1010
Roth v. City of Glendale, 3051
Rottman v. Endejan, 3048
Rowe v. Compensation Research Bureau, Inc., 3067
RTE Corp. v. Maryland Casualty Co., 3117
Rubin v. Schrank, 2100
Ruby v. Ohio Casualty Ins. Co., 1600
Rud v. McNamara, 2401
Rudy v. Chicago, M. St. P. & P. R.R., 1026.5
Ruka v. Zierer, 1045
Rule v. Jones, 4000
Rumary v. Livestock Mortgage Credit Corp., 230
Runjo v. St. Paul Fire Marine Ins. Co., 1023
Ruppa v. American States, Inc., 1904
Russell Grader Mfg. Co. v. Budden, 3202
Ryan v. Cameron, 1500
Ryan v. Department of Taxation, 4030
Ryan v. Estate of Sheppard, 3070
Ryan v. Zweck-Wollenberg Co., 3240, 3242
Ryder v. State Farm Mut. Auto Ins. Co., 3057

S

S. A. Healy v. Milwaukee Metropolitan Sewerage District, 3051
S.C. Johnson & Son, Inc. v. Morris, 400, 425, 1732
Sabinasz v. Milwaukee & Suburban Transp. Corp., 1025, 1030
Salladay v. Town of Dodgeville, 63
Sample v. United States, 4035
Sampson v. Laskin, 1500, 1900.4
Samson v. Riesing, 3201, 3204, 3211
Sandeem v. Willow River Power Co., 1051, 1885

WIS JI-CIVIL CASES CITED

Sander v. Newman, 4080
Sanderfoot v. Sherry Motors, Inc., 3117, 3118
Sandford v. R. L. Coleman Realty Co., 2150
Sands v. Menard, 3028
Saros v. Carlson, 4015
Sasse v. State, 152
Sater v. Cities Serv. Oil Co., 4005
Saveland v. Western Wis. R. Co., 4005
Saxhaug v. Forsyth Leather Co., 1900.4
Saylor v. Marshall and Ilsley Bank, 3082
Scales v. Boynton Cab Co., 1025
Scalzo v. Marsh, 305
Scandrett v. Greenhouse, 2401, 2402
Scarpace v. Sears Roebuck & Co., 2750, 2800
Schaefer v. State Bar of Wis., 2500
Schaefer v. Weber, 3200
Schaller v. Marine Nat'l Bank of Neenah, 3044
Schara v. Thiede, 2200
Schauf v. Badger State Mut. Casualty Co., 3116
Schemenauer v. Travelers Indem. Co., 350, 410
Scherg v. Puetz, 3054
Schey Enterprises, Inc. v. State, 8100, 8101
Schicker v. Leick, 8030
Schier v. Denny, 2605
Schiller v. Keuffel & Esser Co., 1731
Schiro v. Oriental Realty Co., 1920, 1922, 1928, 1930, 1932
Schlewitz v. London & Lancashire Indem. Co., 1095
Schlintz v. Equitable Life Assurance Soc'y, 3061
Schlueter v. Grady, 1070, 1090
Schmidt v. Jansen, 1070
Schmidt v. Northern States Power Co., 950
Schmidtke v. Great Atlantic & Pacific Tea Co. of Am., 3072
Schmiedeck v. Gerard, 1055, 1065
Schmit v. Klumpyan, 2620
Schmit v. Sekach, 155, 1105A, 1591, 1595
Schmorrow v. Sentry Ins. Co., 1900.4, 1910
Schnabl v. Ford Motor Co., 1500
Schneck v. Mutual Serv. Co., 3116
Schneider v. Schneider, 3049
Schneider v. State of Wisconsin, 8111
Schoedel v. State Bank of Newburg, 2401, 2402
Schoenauer v. Wendinger, 1158, 1220, 1225, 1255
Schoenberg v. Berger, 325
Schoenfeld v. Journal Co., 2500
Schoer v. West Bend Mutual Ins. Co., 3110
Schroeder v. Kuntz, 1315, 1320
Schrubbe v. Peninsula Veterinary Serv., 1800, 1806
Schubert v. Midwest Broadcasting Co., 3735
Schubring v. Weggen, 1035
Schueler v. City of Madison, 1255
Schuh v. Fox River Tractor Co., 3262
Schultz v. Industrial Coils, Inc., 2750
Schultz v. Miller, 1760
Schulz v. Chicago, M. St. P. & P. Ry., 1407, 1410
Schulz v. General Casualty Co., 1105, 1855
Schulz v. St. Mary's Hosp., 265, 315
Schulze v. Kleeber, 1383, 2006, 8045

WIS JI-CIVIL CASES CITED

Schuster v. Altenberg, 1023
Schuster v. St. Vincent Hosp., 1384, 1385
Schwalbach v. Antigo Elec. & Gas, Inc., 1803, 3200
Schwartz v. City of Milwaukee, 1815, 8035
Schwartz v. Evangelical Deaconess Soc'y of Wis., 3020
Schwartz v. San Felippo, 1352
Schwartz v. Schneuriger, 1140
Schwartz v. Schwartz, 2605
Schwarz v. Winter, 1354
Schweidler v. Caruso, 1354, 1355, 1610
Schwenn v. Loraine Hotel Co., 1910, 1911
Scipior v. Shea, 180
Scory v. LaFave, 1500
Seaman v. McNamara, 3040
Seavey v. Jones, 4000
Seefeldt v. WISDOT, 8111
Segnitz v. A. Grossenbach Co., 3026
Seichter v. McDonald, 3110
Seidl v. Knop, 4035
Seidling v. Unichem, Inc., 3068
Seif v. Turowski, 1105A
Seifert v. Balink, 260, 1023
Seitz v. Seitz, 1090, 1825
Seitzinger v. Community Health Network, 3051
Seligman v. Hammond, 353, 1135, 1140
Sell v. General Elec. Supply Corp., 3014, 4005
Selleck v. City of Janesville, 1710, 1815
Sellmer Co. v. Industrial Comm'n, 4040
Seltrecht v. Bremer, 1023.5
Selzer v. Brunzell Bros., Ltd. 2400
Serkowski v. Wolf, 305
Sevey v. Jones, 1600
Shain v. Racine Raiders Football Club, Inc., 2020
Shannon v. City of Milwaukee, 1383, 4035
Shannon v. Shannon, 8020
Sharp v. Case Corp., 1707.2, 3240, 3260
Sharpe v. Hasey, 1910
Shaw v. Wisconsin Power & Light Co., 1002
Shaw v. Wuttke, 1010
Shawver v. Roberts Corp., 100, 215, 3262
Sherley v. Peehl, 3012
Shetney v. Shetney, 3022
Shevel v. Warter, 4020
Shier v. Freedman, 1023, 1023.7
Shockley v. Prier, 1815, 1837, 1845
Short Way Lines v. Sutton's Adm'r, 1050
Shy v. Industrial Salvage Material Co., 3056, 3076
Siebert v. Morris, 1013
Silberman v. Roethe, 3074
Simmons v. Industrial Comm'n, 4045
Simon v. Van de Hey, 1105
Singleton v. Kubiak & Schmitt, Inc., 1911
Skaar v. Dept of Revenue, 4080
Skebba v. Kasch, 3074
Skindzelewski v. Smith, 1023.5
Slattery v. Lofy, 1060, 1065
Smader v. Columbia Wis. Co., 4015

WIS JI-CIVIL CASES CITED

Smaxwell v. Bayard, 1391, 8020
Smee v. Checker Cab Co., 202, 1705
Smith v. Atco Co., 3200, 3240, 3242
Smith v. Federal Rubber Co., 2600
Smith v. Goshaw, 8020
Smith v. Milwaukee County, 1020
Smith v. Pabst, 1025.6, 1391
Smith v. Poor Hand Maids of Jesus Christ, 1025.7
Smith v. Sneller, 1050
Smuda v. Milwaukee County, 8120
Sniden v. Laabs, 3740
Snider v. Northern States Power Co., 1022.6
Snow v. Koepl, 2550
Solberg v. Robbins Lumber Co., 215
Somers v. Germania Nat'l Bank, 3057
Sommerfield v. Flury, 1032
Sparling v. Thomas, 1350
Spencer v. ILHR Dep't, 1710
Spensley Feeds v. Livingston Feed & Lumber, Inc., 1
Spheeris Sporting Goods, Inc. v. Spheeris on Capitol, 2790
Spigelberg v. State of Wisconsin, 8104
Spitler v. Dean, 950
Spleas v. Milwaukee & Suburban Transp. Corp., 1025, 1500
Spoehr v. Mittlestadt, 2500
Sprecher v. Monroe County Fin. Co. v. Thomas, 1731
Sprecher v. Roberts, 4060
Sprecher v. Weston's Bar, Inc., 1806
St. Amant v. Thompson, 2511
St. Clair v. McDonnell, 1113
St. Mary's Hosp. Med. Center v. Brody, 1825
St. Paul Fire & Marine Ins. Co. v. Burchard, 1075
Stack v. Padden, 1825
Stack v. Roth Bros. Co., 3020
Staehler v. Beuthin, 1766
Stahl v. Gotzenberger, 1
Stahler v. Philadelphia & R.R., 1880
Stamnes v. Milwaukee & State Line R. Co., 8105
Staples v. Glienke, 1230, 1260
Starobin v. Northridge Lakes, 2500
State Bank of Viroqua v. Capitol Indem., 3117
State ex rel. Brajdic v. Seber, 200
State ex rel. Park Plaza Shopping Center, Inc. v. O'Malley, 410
State ex rel. Schultz v. Bruendl, 1005, 1009
State Farm Mutual Automobile Insurance Co. v. Campbell, 1707.1
State Farm Mutual Automobile Insurance Co. v. Ford Motor Co., 2400
State Farm Fire & Cas. Co. v. Amazon, 3200
State Farm Fire & Cas. Co. v. Hague Quality Water, Int'l, 2400
State of Wisconsin v. Abbott Laboratories, 1
State v. Anderson, 80
State v. Automatic Merchandisers of America, Inc., 2418
State v. Blaisell, 2722
State v. Caibaosai, 1035
State v. Camara, 2115
State v. Chew, 2006.2
State v. Cooper, 63
State v. Darcy N. K., 57
State v. Eaton, 1510

WIS JI-CIVIL CASES CITED

State v. Genova, 2420
State v. Henley, 3295
State v. Herrington, 2115
State v. Hess, 2722
State v. Holt, 1005, 1009
State v. Hutnik, 415
State v. Joe Must Go Club, 1910, 3264
State v. Keyes, 2722
State v. Lederer, 420
State v. Major, 420
State v. City of Prescott, 2750
State v. Robinson, 405
State v. Schweda, 1
State v. Sobkowiak, 2722
State v. Smith, 2115
State v. Tarrell, 63
State v. Vogel, 420
State v. Williamson, 405
State v. Wolske, 1035
State v. Wolter, 2722
Statz v. Pohl, 1010, 1013
Steel v. Ritter, 1803, 1804
Steele v. Pacesetter Motor Cars, Inc., 3053
Stefan Auto Body v. State Highway Comm., 8111
Stefanovich v. Iowa Nat'l Mut. Ins. Co., 1900.4, 1904
Steffen v. McNaughton, 4035
Steffes v. Farmers Mut. Auto Ins. Co., 1035
Stehlik v. Rhoads, 1014, 1014.5, 1277, 1278
Steinbarth v. Johannes, 1861
Steinberg v. Jensen, 1500
Steinhorst v. H. C. Prange Co., 1902
Stelloh v. Liban, 2115
Stephenson v. Universal Metrics, Inc., 1397
Steuck Living Trust v. Easley, 8060
Stevens v. Farmers Mut. Auto Ins. Co., 1140
Stevenson v. Barwineck, 2400, 2401, 2402
Stewart v. City of Ripon, 1720
Stilwell v. Kellogg, 1
Stippich v. Morrison, 3116
Stolze v. Manitowoc Terminal Co., 8120
Stopplesworth v. Refuse Hideaway, Inc., 50
Strack v. Great Atlantic & Pacific Tea Co., 1900.4
Strahlendorf v. Walgreen Co., 3200, 3242
Strait v. Crary, 1010
Straub v. Schadeberg, 1096
Strauss Bros. Packing Co. v. American Ins. Co., 1806
Strelecki v. Fireman's Ins. Co. of Newark, 1815
Strenke v. Hogner, 1707.1
Strid v. Converse, 2600, 2605, 2620
Strnad v. Cooperative Ins. Mut., 325
Strong v. Milwaukee, 2100
Strupp v. Farmers Mut. Automobile Ins. Co., 1600
Stuart v. Weisflog's Showroom Gallery, Inc., 2400, 2720
Stunkel v. Price Elec. Cooperative, 1922, 1928
Struthers Patent Corp. v. Nestle Co., 400
Sufferling v. Heyl & Patterson, 202, 1705
Suhaysik v. Milwaukee Cheese Co., 1051, 1056

WIS JI-CIVIL CASES CITED

Suick v. Krom, 315
Sulkowski v. Schaefer, 1075, 1825, 1840, 1845
Sullivan v. Minneapolis, St. Paul & S.S.M.R. Co., 200
Sumnicht v. Toyota Motor Sales, 1500, 1723, 3260, 3260.1
Sunnyslope Grading, Inc. v. Miller, Bradford & Risberg, Inc., 2400
Super Value Stores, Inc. v. D-Mart Food Stores, Inc., 3044
Surety Savings & Loan Association v. WISDOT, 8111
Swanson v. Maryland Casualty Co., 1115, 1120
Sweeney v. Matthews, 3200
Sweet v. Chicago & N.W. Ry., 1796
Sweet v. Underwriters Casualty Co., 1032
Swinkles v. Wisconsin Mich. Power Co., 1210
Sykes v. Bensinger Recreation Corp., 1900.4
Symes v. Milwaukee Mutual Ins. Co., 8045

T

T.A.T. v. R.E.B., 5001
Tackes v. Milwaukee Carpenters Health Fund, 1023.6
Takeru v. Ford Motor Co., 3201, 3211
Talley v. Mustafa, 1383
Tallmadge v. Boyle, 1023.5
Tang v. C.A.R.S. Protection Plus, Inc., 3310
Tanner v. Shoupe, 3240
Tatera v. FMC Corp., 1022.2, 3242
Tatur v. Solsrud, 1005, 1009
Taylor v. Bricker, 3022
Taylor v. Western Casualty & Sur. Co., 1580, 1585, 1590
Teas v. Eisenlord, 1030, 1047.1, 1075, 1076
Tegen v. Chapin, 3200
Tempelis v. Aetna Casualty & Surety Co., 3100
Templeton v. Crull, 1391
Tenney v. Cowles, 3220, 3225
Tensfeldt v. Haberman, 1023.5
Terry v. Journal Broadcast Corp., 1510, 2505, 2725
Tesch v. Industrial Comm'n, 4060
Tesch v. Wisconsin Pub. Serv. Corp., 1113
Tew v. Marg, 3200, 3211
The J. Thompson Mfg. Co. v. Gunderson, 3058
The Lamar Co. v. Country Side Restaurant, 8060
The Milwaukee & Mississippi R.R. Co. v. Elbe, 8115
The Yacht Club at Sister Bay Condominium Ass'n, Inc. v. Village of Sister Bay, 1920
Theama v. City of Kenosha, 1838
Theatre Enterprises, Inc. v. Paramount Film Dist. Corp., 2804
Theisen v. Milwaukee Auto Mut. Ins. Co., 353, 1021.2, 1046, 1047, 1047.1, 1075, 1140, 1500, 1591
Theuerkauf v. Sutton, 1812
Thieme v. Weyker, 1055
Thomas v. Lockwood Oil Co., 4035
Thomas v. Mallett, 3295
Thomas v. Williams, 1707
Thompson v. Beecham, 2605, 2620
Thompson v. Nee, 1113
Thompson v. Village of Hales Corners, 3057
Thoreson v. Milwaukee & Suburban Transp. Corp., 410, 1230, 1840
Thorp v. Mindeman, 3040
Thurn v. LaCrosse Liquor Co., 4030
Turner Heat Treating Corp. v. Menco, Inc., 3710

WIS JI-CIVIL CASES CITED

Tidmarsh v. Chicago M. & St. P. Ry., 1855
Tietsworth v. Harley-Davidson, Inc., 2401, 2418
Tillman v. Michigan-Wisconsin Pipe Line Co., 8100
Tills v. Elmbrook Memorial Hosp., Inc., 1023.7
Todorovich v. Kinnickinnic Mut. Loan & Bldg. Ass'n, 3010, 3014
Tombal v. Farmers Ins. Exch., 1096, 1105A, 1153
Tomberlin v. Chicago, St. P., M. & O. Ry., 1075
Topham v. Casey, 1760
Topolewski v. Plankinton Packing Co., 4050
Topp v. Continental Ins. Co., 1900.4
Topzant v. Koshe, 2201
Totksy v. Riteway Bus Serv., Inc., 1005, 1009, 1105, 1105A, 1325, 1325A
Tower Special Facilities, Inc. v. Investment Club, Inc., 2605
Town of Fifield v. State Farm Ins. Co., 1803, 1806
Treps v. City of Racine, 8020
Treptau v. Behrens Spa, Inc., 1023
Trinity Evangelical Lutheran Church v. Tower Ins. Co., 1707.1
Tri-State Home Improvement Co. v. Mansavage, 3700
Tri-Tech Corp. v. Americomp Serv., 2419, 2420, 2722
Trogun v. Fruchtman, 1023, 1023.7, 1024, 2005
Troppe v. Scarf, 1742
Truelsch v. Miller, 230
Tucker v. Marcus, 1707
Turk v. H. C. Prange Co., 1145, 1501, 3200
Turner v. Industrial Comm'n, 4045
Tuschel v. Haasch, 1350
Tuteur, Adm'r v. Chicago & N. W. Ry., 1880
TXO Prod. Corp. v. Alliance Resources Corp., 1707.1
Tynan v. JVBVB, LLC, 3074

U

Underwood v. Paine Lumber Co., 4050
Underwood v. Strasser, 415
Underwood Veneer Co. v. London Guar. & Accident Co., 3117
United Concrete & Construction v. Red-D-Mix Concrete, Inc. 2401, 2403, 2418
United States Fidelity & Guar. Co. v. Milwaukee & Suburban Transp. Corp., 1025
United States Fidelity & Guar. Co. v. Forest County State Bank, 4010
United States v. Bausch & Lomb Optical Co., 2802
United States v. Causby, 8112
United States v. Crescent Amusement Co., 2808
United States v. First Nat'l Bank & Trust Co. of Lexington, 2800
United States v. National City Lines, 2802
United States v. Paramount Pictures, Inc., 2802
United States v. Patten, 2806
United States v. Richards, 1920
United States v. Sanno, 2802
United States v. Standard Oil Co., 2800
United States v. Twentieth Century Fox Film Corp., 2804
United States v. Vasquez, 2115
United States v. Walker, 2115
United States v. Wise, 2802
Utech v. Milwaukee, 8100

V

Valiga v. National Food Co., 410, 3202, 3207, 3208

WIS JI-CIVIL CASES CITED

Van Galder v. Snyder, 1225
Van Gheem v. Chicago & N.W. Ry., 1405
Van Lare v. Vogt, Inc., 2400, 2401
Van Matre v. Milwaukee Elec. Ry. & Transp. Co., 1280
Van Riper v. United States, 2802
Van Wie v. Hill, 1157
Vandehey v. City of Appleton, 2405, 2405.5
Vanden Heuvel v. Schultz, 1096
Vandenack v. Crosby, 1075
Vanderbloemen v. Suchosky, 100
Vandermark v. Ford Motor Co., 3200
Vandervort v. Industrial Comm'n, 1910
Venzke v. Magdanz, 3700
Ver Hagen v. Gibbons, 1511
Verbeten v. Huettl, 1132, 1133
Verhelst Constr. Co. v. Galles, 1820
Vetter v. Rein, 1804, 1805
Victorson v. Milwaukee & Suburban Transp. Corp., 200, 410, 1019, 1025, 1760, 1815
Village Food & Liquor v. H&S Petroleum, Inc., 1
Viola v. Wisconsin Electric Power Co., 1900.4
Vivid, Inc. v. Fiedler, 8130
Vodrey Pottery Co. v. H. E. Home Co., 3225
Voell v. Klein, 4005, 4010
Vogel v. Grant-Lafayette Elec. Coop., 1922, 1928
Vogel v. State, 420
Vogel v. Vetting, 1155, 1580, 1585, 1590
Vogelsburg v. Mason, 1902
Vogt v. Chicago, M., St. P. & P. R.R., 180
Voigt v. Voigt, 1140, 1280
Voith v. Buser, 415, 2005.5
Volbrecht v. State Highway Comm'n, 8102, 8105
Volk v. Stowell, 3070
Vonch v. American Standard Ins. Co., 1035
Vosburg v. Putney, 1010, 2005
Vultaggio v. General Motors, 3300, 3304

W

W.G. Slugg Seed & Fertilizer v. Paulsen Lumber, 3700
Wadzinski v. Cities Serv. Oil Co, 1025.6
Wagner v. Continental Casualty Co., 1022.2, 1022.6, 4060
Wagner v. Mittendorf, 1725
Wagner v. Wisconsin Municipal Mut. Ins. Co., 8020
Wait v. Pierce, 2900
Waldheim & Co., Inc. v. Mitchell St. Bank, 4015
Waldman v. Young Men's Christian Ass'n, 1910
Walk v. Boudheim, 1052, 1054
Walker v. Baker, 1796
Walker v. Bignell, 1005, 1009
Walker v. Kroger Grocery & Baking Co., 1585, 1590
Walker v. Sacred Heart Hospital, 1024, 1384
Wall v. Town of Highland, 1048
Walsh v. Wild Masonry Co., 1051
Walter v. Four Wheel Drive Auto Co., 4005
Wandry v. Bull's Eye Credit Union, 2750
Wangen v. Ford Motor Co., 200, 205, 1707, 1707.1, 1850, 2500, 2520, 2725
Wanta v. Milwaukee Elec. Ry. & Light Co., 305

WIS JI-CIVIL CASES CITED

Wappler v. Schench, 1076
Waranka v. State Farm Mut. Auto Ins. Co., 1870, 1895, 1897
Warren v. American Family Mut. Ins. Co., 2760
Washburn v. Milwaukee & Lake Winnebago R.R. Co., 8120
Wasikowski v. Chicago & N. W. Ry., 1338
Water Quality Store v. Dynasty Spas, Inc., 2769
Waters v. Markham, 1032
Waters v. Pertzborn, 1707.1
Watland v. Farmers Mut. Auto Ins. Co., 1035
Waube v. Warrington, 1510, 1511
Waukesha County v. J.W.J., 7050
Wauwatosa Realty Co. v. Bishop, 3048
Webb v. Wisconsin S. Gas Co., 1002
Webber v. Wisconsin Power & Light Co., 1803, 1804
Weber v. Hurley, 1022.6, 4060
Weber v. Interstate Light & Power Co., 1002
Weber v. Mayer, 1070
Weber v. White, 1758
Weber v. Young, 2100
Weborg v. Jenny, 260, 1023, 1757
Webster v. Krembs, 1760, 1835
Webster v. Roth, 1403, 1408, 1409
Wedell v. Holy Trinity Catholic Church, 2900
Weggeman v. Seven-Up Bottling Co., 3200
Weigell v. Gregg, 4005
Weihert v. Piccione, 8045
Weil-McLain Co. v. Maryland Casualty Co., 4005
Weil v. Biltmore Grande Realty Corp., 3030
Weinhagen v. Hayes, 4020
Weise v. Polzer, 1500
Weise v. Reisner, 2800
Weiseger v. Wheeler, 4015
Weiss v. Holman, 1395, 8030
Weiss v. United Fire and Casualty Co., 2760, 2761
Welch v. Milwaukee St. P. R.R., 8104
Wells v. Chicago & N.W. Transp. Co., 1411
Wendt v. Manegold Stone Co., 8012
Wendy M. v. Helen E.K., 3074
Wergin v. Voss, 1920
Werlein v. Milwaukee Elec. Ry & Transp. Corp., 1025
Werner Transp. Co. v. Barts, 1300
Werner Transp. Co. v. Zimmerman, 1210
Werner v. Gimbel Bros., 1900.4, 1910
Wertheimer v. Saunders, 1022.6
West v. Day, 1840
Westby v. Madison Newspapers, Inc., 2500
Westcott v. Mikkelsen, 1510, 1511
Western Casualty & Sur. Co. v. Dairyland Mut. Ins. Co., 1125
Westfall v. Kottke, 350, 1055, 1070, 1114, 1144, 1355, 1600
Westmas v. Creekside Tree, 4000
Weyauwega v. Industrial Comm'n, 4060
Whipp v. Iverson, 2401, 3068
White Hen Pantry v. Buttke, 2771
White v. Benkowske, 3725
White v. Leeder, 1391
White v. Lunder, 1815, 1820
White v. Minneapolis, St. P. & S. S. M. Ry., 1336

WIS JI-CIVIL CASES CITED

White v. Stelloh, 3220, 3225
White v. The Milwaukee City Ry. Co., 1705
Whitty v. State, 415
Widemshek v. Fale, 2520
Wiener v. J.C. Penney Co., 3295
Wiger v. Carr, 4027
Wilcox v. Estate of Hines, 8060
Will of Bate, 3032
Will of Rice: Cowie v. Strohmeyer, 3057
Williams v. Brown Mfg. Co., 3200
Williams v. Journal Co., 2505
Wills v. Regan, 1385
Wilmet v. Chicago & N.W. Ry., 1411
Wilson v. Koch, 1030, 1191
Wilson v. Young, 1708
Winkelman v. Beloit Memorial Hosp., 2750
Winnebago County v. Christopher S., 7050
Winslow v. Brown, 2007
Winston v Minkin, 3086, 3740
Wintersberger v. Pioneer Iron & Metal Co., 1352
Wirsing v. Krzeminski, 2008, 2155
Wischer v. Mitsubishi Heavy Industries America, Inc., 1707.1
Wisconsin Bell, Inc. v. Labor & Indus. Review Comm'n, 2750
Wisconsin Bridge and Iron Co. v. Industrial Comm'n, 1900.4
Wisconsin Elec. Power Co. v. Zallea Bros., Inc., 3202, 3262
Wisconsin Loan & Fin. v. Goodnough, 1010, 2000
Wisconsin Natural Gas Co. v. Employers Mut. Liab. Ins. Co., 1021.2
Wisconsin Natural Gas Co. v. Ford, Bacon & Davis Constr., 1580
Wisnicky v. Fox Hills Inn & Country Club, 8020
Wm. Beaudoin & Sons, Inc. v. Milwaukee County, 3070
Wodill v. Sullivan, 1113
Wojahn v. National Union Bank of Oshkosh, 3026
Wojciechowski v. Baron, 1260
Wojciuk v. United States Rubber Co., 3200, 3211, 3240
Wolnak v. Cardiovascular & Thoracic Surgeons of Central Wisconsin, S.C., 2780
Woodcock v. Home Mut. Casualty Co., 1125
Wood v. Heyer, 3200
Woodward v. City of Boscobel, 1720
Wosinski v. Advance Cast Stone Co., 1511, 1707.1, 1855, 3074, 3710
Wozny v. Basack, 3086
Wright v. Hasley, 2725
Wright v. Mercy Hosp., 1021, 1880
Wunderlich v. Palatine Fire Ins. Co., 100
Wurdemann v. Barnes, 1023
Wurtzler v. Miller, 3290
Wussow v. Commercial Mechanisms, Inc., 2520

Y

Yanta v. Montgomery Ward & Co., Inc., 2750
Yao v. Chapman, 1025.7
Yaun v. Allis-Chalmers Mfg. Co., 3200, 3254
Yelk v. Seefeldt, 2600, 2605
Young v. Anaconda Am. Brass Co., 1051.2
Young v. Professionals Ins. Co., 1023

WIS JI-CIVIL CASES CITED

Z

Zabel v. Zabel, 1
Zarling v. LaSalle Coca-Cola Bottling Co., 3200
Zartner v. Scopp, 1053, 1195, 1354
Zastrow v. Journal Communications, Inc., 1
Zawistowski v. Kissinger, 1707.1
Zehren v. F. W. Woolworth Co., 1900.4, 1902, 1904
Zeinemann v. Gasser, 1140, 1280
Zeller v. Northrup King Co., 1707
Zenner v. Chicago, St. P., M. & O. Ry., 315, 1210
Ziegler Co., Inc. v. Rexnord, Inc., 2769
Ziino v. Milwaukee Elec. Ry. & Transp. Co., 1145
Zimmerman Bros. & Co. v. First Nat'l Bank, 3014
Zinda v. Louisiana Pacific Corp., 2550, 2552
Zindell v. Central Mut. Ins. Co., 1030, 1804
Zintek v. Perchik, 1816
Zinzow Constr. Co. v. Giovannoni, 3220
Zoellner v. Fond du Lac, 1049
Zoellner v. Kaiser, 1056, 1320
Zombkowski v. Wisconsin River Power Co., 8100
Zuelke v. Gergo, 3048
Zummach v. Polasek, 4005
Zweck v. D. P. Way Corp., 3051

WIS JI-CIVIL INDEX

(References are to Instruction Numbers.)

A

Abettor, liability of, battery, 2007
Abrogation of tort immunities,
 Law Note, 2900
Absent witness, 410
Abuse of privilege
 defamation, nonconstitutional conditional privilege,
 2507
 defamation, constitutional, 2511, 2513
 malicious prosecution, 2552
Abuse of process, 2620
Access rights, defined, eminent domain, 8111
Accident, unavoidable, 1000
Accrual of claim, 950
Activation of latent disease or condition, 1720
Adult and child, comparative negligence, 1582
Adult child, death of, pecuniary loss, 1885
Adverse possession
 elements, 8060
 burden of proof, 200
Advice of counsel as defense, malicious prosecution, 2610
Agency
 agent's duty to principal, 4020
 apparent authority of agent, 4005
 defined, 4000
 driver of automobile, 1600
 general agent, defined, 4001
 implied authority of agent, 4010
 independent contractor, definition, 4060
 master-servant, See Scope of employment ratification
 by principal of agent's acts, 4015
 servant, See Scope of employment special agent,
 defined, 4002
 termination, general, 4027
 termination, notice to third party, 4028
 volunteer, without compensation, 4025
Agent, negligence of insurance, 1023.6
Aggravation of injury, damages
 injury because of medical malpractice, 1710
 latent disease or condition, 1720
 preexisting injury, 1715
Agreement, See also Contracts
 defined, 3010
 release, avoidance of for mutual mistake of fact, 3012
 supplemental instruction on, 195
Air rights, defined, eminent domain, 8112
Alcohol, See also Negligence
 negligence of person consuming, 1035 (comment)
 test for, in blood, 1008,
Alcoholic, commitment of, 7070
Allergy of user, implied warranty, 3209
Alley, emerging from
 stop, 1330
 stop and yield right of way, 1270
 yield right of way, 1175
Ambiguous contracts, 3051
Animal (dog) owner's or keeper's liability common law,
 1391
 statutory, 1390
Animals, right of way, 1200

Apparent authority, agency, 4005
Application for insurance, See Insurance
Approaching car
 at intersection, defined, 1195
 on highway, defined, 1205
Approaching nonarterial intersections, right of way, 1155
 Approaching or entering intersection about same time,
 1157
Approach of emergency vehicle, right of way, 1210
Arguments of counsel
 instruction at close of evidence, 110
 preliminary instruction, 50
Arrest
 defined, 2115
 excessive force in, 2008, 2155
 false, 2115
 without a warrant, reasonable grounds, 2115
Arterial, driver on, right of way, 1090
Artificial condition as attractive nuisance, 1011
Asking questions, by juror, 57
Assault, 2004
Assumption of due care by highway user, 1030
Assumption, of duty, voluntary, 1397
Attorney, See also Counsel
 fees, 3760
 malpractice, 1023.5
 status as a specialist, 1023.5A
Attractive nuisance, 1011, 8025
Audible, defined, 1210
Authority
 apparent, agency, 4005
 implied, agency, 4010
Automobile, See also Vehicles
 damage to, 1805
 defective condition of, host's liability, 1032
 driver of, agency, 1600
 joint adventure (enterprise), 1610
 Lemon Law, 3300, 3301, 3302, 3303, 3304
 loss of use, damages
 not repairable, 1801
 repairable, 1800
 Magnuson-Moss Act claim, 3310
 owner's permission for use of, 3112
 racing of, 1107
Avoidance of contract for mutual mistake of fact, 3072

B

Backing, lookout, 1060
Bad faith by insurance company, 2760, 2761, 2762
Bailment
 defined, 1025.5
 duty of bailee under for mutual benefit, 1025.7
 duty of bailor for hire, 1025.6
 negligence of bailee may be inferred, 1026
 negligence of carrier presumed, 1026.5
Bailor, negligence of gratuitous, 1025.8
Battery,
 defense of property, 2006.5
 defined, 2005
 excessive force in arrest, 2008, 2155

WIS JI-CIVIL INDEX

(References are to Instruction Numbers.)

Battery (continued)
 liability of aider and abettor, 2007
 offensive contact 2005.5
 punitive damages, 1708
 self-defense, 2006
 sports participant, injury, 2020
Bell, railroad, duty to ring within municipality, 1402
Belt, safety, failure to use, 1277
Benefit-of-the-bargain, 2405, 2405.5
Benefits, special, defined, eminent domain, 8115
Bifurcation, punitive damages, 1707.1 (comment)
Blind persons
 duty of, 1050
 right of way, 1170
Blood test for alcohol, 1008
Brakes, equipment, and maintenance of vehicles, 1054
Breach of contract, 3053
 by purchaser, damages, 3750
 by seller, damages, 3755
Breach of warranty, See Products liability
Building
 abutting on a public highway, owner's duty, 8030
 public, negligence of owner, safe-place statute, 1904
Building contractor, negligence of, 1022.4
Building contracts, damages, 3700, 3701
Burden of proof, See Evidence
Bus, school
 flashing red signals, 1133
 stopped on highway, 1132
Business
defined, safe-place statutes, 1910
 defined, strict liability (products), 3264
 injury to, 2820, 2822
 liability of proprietor, patron injured, act of third person, 8045
 loss of profits, damages, 1750.2, 1754, 1780
 nuisance arising out of operation of, 1924
Buyer, duty of, 3254
Bystander recovery, 1510

C

Camouflage
 lookout, 1056
 speed, 1320
Capitalization of rental income, eminent domain, 8130
Care, ordinary, varies with circumstances, 1020
Caregiver, duty of, 1021
Carrier, common, 1025
Castle Doctrine, 2006.2
Cause
 defined, 1500
 informed consent cases, 1023.1, 1023.3, 1023.16, 1023.17
 normal response, 1501
 probable cause, malicious prosecution, 2605
 proximate, 1500
 relation of collision to physical injury, 1506
 risk contribution theory, 3295
 where cause of death is in doubt, 1505
Charge after verdict, 197

Chemical tests, intoxication, 1008
Child
 and adult, comparative negligence, 1582
 attractive nuisance, 1011, 8025
 death of adult child, pecuniary loss, 1885
 death of child, parents' loss of society and companionship, 1895
 death of minor child, pecuniary loss, 1890
 driver's duty when present, 1045
 injury to, parents' damages
 for loss of child's services, 1835
 for loss of society and companionship, 1837
 for medical expenses, 1840
 for services rendered to child, 1845
 injury to parent, 1838
 loss of society and companionship for death of parent, 1897
 negligence of, 1010
 negligence of child compared with adult, 1582
 parents' duty
 negligent entrustment, 1014
 to control, 1013
 to protect, 1012
 trespasser, 8025, 8027
Chiropractor
 determining treatability, 1023.9
 duty to inform patient, 1023.15, 1023.16, 1023.17
 negligence of, 1023.8, 1023.9
Circumstantial evidence, 230
Civil rights, See Federal civil rights
Civil theft
 by contractor, 2722
 by contractor of movable property of another, 2420
Closing instruction, 190, 191
Collateral source, 1756, 1757
College degree, delay in obtaining, 1760
Commitment
 of a mentally disabled person, 7050
 of an alcoholic, 7070
Common carrier, negligence of, defined, 1025
Common motor carrier
 defined, 1339
 stop at all railroad crossings, 1339
Common scheme or plan, 1740
Comparable sales, eminent domain, 8120
Comparative negligence
 adult and child, 1582
 basis of comparison, 1580, 1585, 1590
 multiple driver-multiple guest comparison, 1591
 recommended questions, 1592
 when negligence or cause question has been answered by the court, 1595
Compensatory damages, See Damages
Computer use, by jurors, 50
Concerted action, 1740
Condemnation, See Eminent domain
Conditional privilege
 defamation, abuse of, 2509
 emergency vehicle, 1031
 invasion of privacy, abuse of, 2552
Consortium, defined, 1815

WIS JI-CIVIL INDEX

(References are to Instruction Numbers.)

- Conspiracy
 - affiliated corporations, between, 2808
 - defined, 2800
 - evidence of to be viewed as a whole, 2806
 - indirect proof, 2802
 - injury to business, 2820, 2822
 - overt acts, 2810
 - proof of membership, 2802
 - restraint of will, 2822
- Construction workers, right of way, 1265
- Constructive eviction, 3095
- Consumer, duty of, 3254
- Contact sports injury, 2020
- Contractor
 - building, contract damages, 3701, 3700
 - building, negligence of, 1022.4
 - independent, defined, 4060
 - liability of one employing, 1022.6
 - theft by, 2722
- Contracts
 - abandonment, mutual, 3078
 - agreement, 3010
 - ambiguous provisions, 3051
 - avoidance for mutual mistake of fact, 3072
 - breach, 3053
 - by purchaser, damages, 3750
 - by seller, damages, 3755
 - building contracts, damages, 3700
 - consideration, 3020
 - damages, out-of-pocket rule, 3710
 - definiteness and certainty, 3022
 - definitions — "bona fide," 3045
 - demand for performance, 3054
 - duration, 3049
 - estoppel, 3074
 - frustration of purpose, 3070
 - good faith, 3044
 - hindrance or interference with performance, 3060
 - implied contract
 - general, 3024
 - promise to pay reasonable value, 3026
 - unjust enrichment, 3028
 - implied promise of no hindrance, 3046
 - impossibility
 - act of God, 3066
 - disability or death of a party, 3067
 - original, 3061
 - partial, 3063
 - superior authority, 3065
 - supervening, 3062
 - temporary, 3064
 - insurance contracts, See Insurance
 - interference with, 2780
 - integration of several writings, 3040
 - landlord-tenant, 3095
 - modification
 - by conduct, 3032
 - by mutual assent, 3030
 - novation, 3034
 - offer
 - acceptance, 3014
 - making, 3012
 - rejection, 3016
 - revocation, 3018
 - partial integration, contract partly written, partly oral, 3042
 - real estate listing contract
 - broker's commission on sale subsequent to expiration of contract containing "extension" clause, 3090
 - termination for cause, 3088
 - validity, performance, 3086
 - rescission for nonperformance, 3076
 - sale of goods, delivery or tender of performance, 3056
 - subsequent construction by parties, 3050
 - substantial performance, 3052
 - termination of servant's employment
 - additional consideration provided by servant, 3084
 - employer's dissatisfaction, 3083
 - indefinite duration, 3082
 - time as an element, 3048
 - tortious interference with, 2780
 - voidable contracts, duress, fraud, misrepresentation, 3068
 - waiver, 3057
 - waiver of strict performance, 3058
- Contribution, risk, 3295
- Contributory negligence
 - defined, 1007
 - highway defect, 1048
 - of guest
 - intoxication, 1035
 - failure to protect, 1047
 - placing self in position of danger, 1049
 - of mentally disabled person, 1007, 1385.5
 - of patient and informed consent, 1007, 1023.4
 - of pedestrian, sidewalk defect, 1049 of rescuer, 1007.5
- Control and management, See Management and control
- Controlled intersection, right of way, 1150
- Conversion
 - damages, 2201
 - destruction of property, 2200.2
 - dispossession, 2200
 - failure to return upon demand, 2200.1
- Corporate officers, liability of, 1005
- Costs, reproduction, eminent domain, 8125
- Counsel
 - advice of, as defense, malicious prosecution, 2610
 - arguments of, 110
 - objection of, 115
 - reference to insurance company, 125
- Course of dealing, implied warranty, 3203, 3206
- Court
 - appreciation of jury's services, 197
 - damage question answered by, 150
 - demeanor of, 120
 - finding in special verdict that one or more parties at fault, 108
 - negligence question answered by, 155
 - order striking testimony, 130
 - reference to insurance company, 125
- Credibility of witnesses, 50, 215
- Credible evidence, defined, 200

WIS JI-CIVIL INDEX

(References are to Instruction Numbers.)

Crops, damages for injury to, 1806
Crossing arterial highway, lookout, 1065
Crossing, railroad
 duty of railroad to maintain open view, 1411
 duty of train crew, 1405
Crossing roadway, pedestrian's duties, See Right of way
Crosswalk, pedestrian's rights and duties, See
 Right of way
Custom and usage, evidence of in determining negligence,
 1019

D

Damages

activation of latent disease or condition, 1720
aggravation of injury because of medical
 malpractice, 1710
aggravation of preexisting injury, 1715
attorney fees, 3760
automobile
 loss of use, 1800
 property, 1805
breach of contract
building contracts, 3700, 3701
burden of proof, 202
by purchaser, 3750
by seller, 3755
bystander, 1510
collateral source, 1756, 1757
common scheme or plan, 1740
compensatory, burden of proof as to, 202
condemnation, See Eminent domain
consortium, 1815
contracts
 building, 3700
 breach by purchaser, 3750
 breach by seller, 3755
 general, 3710
conversion, 2201
crops, 1806
damage question answered by the court, 150
death, wrongful
 estate's recovery for medical, hospital, and
 funeral expenses, 1850
 estate's recovery for pain and suffering, 1855
 of adult child, pecuniary loss, 1885
 of child, parents' loss of society and
 companionship, 1895
 of husband, all items, 1861
 of minor child, pecuniary loss, 1890
 of parent,
 loss of society and companionship, 1897
 pecuniary loss, 1880
 of spouse, loss of society and companionship,
 1870
 of wife, medical, hospital, and funeral expenses,
 1875
 of wife, pecuniary loss, 1861
defamation
 compensatory, 2516
 punitive, 2520

disability, past and future, personal injury, 1750.1,
 1750.2, 1766, 1767, 1768
divisible injuries from nonconcurrent or successive
 torts, 1722
dog bite, 1390
duty to mitigate, 1730, 1731
earnings, loss of, as, 1760, 1762
effects of inflation, 1797
eminent domain
 change in grade, 8110
 loss of access, 8110
 severance, 8105
 unit rule, 8100, 8101
 unity of use, two or more parcels, 8107
emotional distress, 1770
enhanced injury, 1723
estate's recovery, 1850, 1855
fraud and deceit, See Misrepresentation future profits,
 3725
general instruction on, 1700
incidental, 3720
income, loss of, as 1760, 1762
income, not taxable as, 1735
in general, 1700
injury to child, parents' damages
 for loss of child's services, 1835
 medical expenses, 1840
 services rendered to child, 1845
injury to a growing crop, 1806
injury to parent, 1838
injury to spouse
 loss of consortium, 1815
 medical and hospital expenses, 1825
 wife's responsibility for her own, 1830
 nursing services, 1820
loss of consortium, 1815
loss of expectation, 3735
misrepresentation
 basis for liability and damages, 2400
 fraud and deceit, measure of damages in sale or
 exchange of property, 2405
 negligence, out-of-pocket rule, fraud, 2406
 strict responsibility, 2405.5
mitigate, duty to, 1730, 1731
nominal, 1810
not taxable as income, 1735
personal injury
 aggravation or activation of latent disease or
 condition, 1720
 aggravation of injury because of medical
 malpractice, 1710
 aggravation of preexisting injury, 1715
 disability, 1750.1, 1750.2, 1766, 1767, 1768
 earning capacity, impairment of, 1750.1, 1750.2,
 1760, 1762
 earnings, loss of
 delay in obtaining a degree, 1760
 future, 1762
 past, 1760
 professional, 1785
 injuries from nonconcurrent or successive torts,
 1722

WIS JI-CIVIL INDEX

(References are to Instruction Numbers.)

Damages (continued)

- life expectancy and mortality tables, 1795
- loss of business, profits, 1760, 1762
- loss of professional earnings, 1760, 1762
- malpractice, lack of informed consent, 1741
- malpractice, offsetting benefit, 1742
- medical and hospital expenses
 - future, 1750.1, 1750.2, 1758
 - past, 1750.1, 1750.2, 1756, 1757
- pain and suffering
 - future, 1750.1, 1750.2, 1767, 1768
 - past, 1750.1, 1750.2, 1766, 1768
- traumatic neurosis, 1770
- present value of future damages, 1796
- property
 - automobile
 - damage to, 1804
 - loss of use, 1800
 - personal
 - damage to, 1804
 - destruction of, 1803
- punitive
 - when awarded, 1707, 1707.1
 - defamation, 2520
 - products liability, 1707A, 1707.2
 - question answered by the court, 150
 - severance
 - change in grade, 8110
 - defined, 8105
 - loss of access, 8110
 - subsequent event causing further injury, 1725
 - termination of real estate listing contract by seller, broker's recovery, 3740

Deaf person, duty of, 1050

Dealership, See Fair Dealership Law this index.

Death

- cause of in doubt, 1505
- of adult child, pecuniary loss, 1885
- of child, parents' loss of society and companionship, 1895
- of husband, all items, 1861
- of minor child, pecuniary loss, 1890
- of parent,
 - pecuniary loss, 1880
 - society and companionship, 1897
- of spouse, loss of society and companionship, 1870
- of wife, medical, hospital, and funeral expenses, 1875
- of wife, pecuniary loss, 1861
- presumption of due care, 353

Deceive, defined, 3105

Defamation

- compensatory damages, 2516
- conditional privilege, abuse of privilege, 2507
- defined, 2501
- express malice, 2513
- Law Note, 2500
- media defendant, abuse of constitutional privilege, 2509
- private individual versus media defendant, 2509
- private individual versus private individual, 2501
- public figure, 2511
- punitive damages, 2520

- truth as defense, 2505, 2505A

Defective condition of car, host's liability, 1032

Defects

- highway, 8035
 - contributory negligence, 1048
- if known in a product, then no implied warranty, 3207
- sidewalk, 8035
 - contributory negligence, 1049

Defense of property, 2006.5

Degree, delay in obtaining, 1760

Deliberation, process of, 191

Demeanor of judge, jury to ignore, 120

Dentist

- duty to inform patient, 1023.15-1023.17
- negligence of, 1023.14

Depositions, use of, See Preliminary instructions before trial

Destruction of personal property, 1803

Deviation

- ascertainment that movement can be made with reasonable safety, 1354
- from clearly indicated traffic lanes, 1355
- signal required, 1350

Directional signals, 1350

Disability, damages, 1750.1, 1750.2, 1766, 1767, 1768

Disabled vehicle, parking, 1125

Discharge, wrongful, 2750

Discovery, 950

Disease or condition, latent, aggravation or activation of, damages, 1720

Dissenting jurors, to sign verdict, 180

Distance between front and rear car, 1112

Divided highway, pedestrians' rights, 1160

Divisible injuries, 1722

Doctor, See Physician

Dog bite, 1390

Dog owner or keeper, liability of

- common law, 1391
- statutory, 1390

Domestic partner, 1861, 1870 (comment)

Double damages, dog bite, 1390

Drinking by driver or guest, relation to negligence, 1035

Driver of automobile

- drinking by, relation to negligence, 1035 duties
- approaching intersection when yellow light shows, 1192
- at railroad crossing, 1336, 1337
- entering intersection with green light in his favor, 1191
- following another, 1112
- preceding another, lookout, 1114
- preceding another, slowing or stopping, signalling, 1113
- when children present, 1045
- inattentive, 1070
- obstructed view, 1310
- position on right side of roadway and exceptions, 1135, 1140
- seat belt negligence, 1277
- as servant, 1600
- scope of employment, 1605

Driver's manual, use by jury, 255

WIS JI-CIVIL INDEX

(References are to Instruction Numbers.)

Driveway
 emerging from a private driveway or other
 nonhighway access, 1355
 left turn into, 1352
Due care, by highway users
 right to assume, 1030
 presumption of, 353
Duties, See entries under specific titles
Duty to inform patient
 cause, 1023.3, 1023.17
 chiropractor, 1023.15-1023.17
 dentist, 1023.15-1023.17
 medical, 1023.1-1023.4
 optometrist, 1023.15-1023.17
 podiatrist, 1023.15-1023.17
 special verdict, 1023.1, 1023.16
Duty to sound horn, nonstatutory, 1096
Duty, voluntary assumption of, 1397

E

Earnings, loss of
 business profits, 1750.1, 1750.2, 1760, 1762
 delay in obtaining degree, 1760
 impairment of earning capacity, future, 1762
 past, 1750.1, 1750.2, 1760
 professional, 1760, 1762
Economic loss doctrine, 2419
Economic waste, 3700
Emergency doctrine, 1105A
Emergency vehicle, approach of, right of way, 1210
Emergency vehicle, conditional privilege, 1031
Emerging from alley or other
 nonhighway, 1175, 1270, 1330, 1335
Emerging from, defined, 1270
Eminent domain, 8100-8145
 access rights, defined, 8111
 air rights, defined, 8112
 assemblage, 8145
 capitalization of rental income, 8120
 change in grade, 8110
 comparable sales, 8120
 cost approach, 8135
 fair market value
 defined, 8100
 lands containing marketable deposits, 8105
 partial taking, 8101
 income approach, 8130
 inconvenience to landowner, 8125 (withdrawn)
 legal nonconforming use, 8140
 reproduction costs, 8135
 severance damages, 8102, 8103
 special benefits, 8115
 unit rule, 8100, 8101
 unity of use, 8104
Emotional distress
 bystander, 1510
 intentional infliction of, 2725
 negligent infliction of, 1510, 1511
Employees of hospital, See Hospital employees
Employer

 duty of, safe-place statute, 1900.2
 liability of one employing independent contractor,
 1022
 negligence of, safe-place statute, 1900.4
 negligent supervision, training, or hiring by, 1383
 vicarious liability of, 4055
 wrongful discharge, 2750
Employment, See also Agency; Scope of employment safe
 place, 1900.2, 1900.4
 wrongful discharge, 2750
Enhanced injuries, 1723
Entering
 defined, 1175
 from alley or nonhighway access point, 1175
 or crossing through highway, 1065
Enterprise, joint, automobile, 1610
Entrustment, negligent, 1014, 1014.5
Equipment and maintenance of vehicles
 brakes, 1054
 directional signals, 1350
 general duty, 1052
 headlights, 1053
 school bus, flashing red signals, 1133
Equitable actions, right to jury trial, 1
Estate's recovery
 for medical, hospital, and funeral expenses, 1850
 for pain and suffering, 1855
Eviction, constructive, 3095
Evidence
 burden of proof, 200
 adverse possession, 200, 205
 compensatory damages, 202
 defined, 100
 false imprisonment, 2105
 "fraud" standard, 205
 higher civil standard, 205
 medical or scientific treatise, 261
 middle, 205
 ordinary civil standard, 200
 preliminary instruction, 50
 circumstantial, 230
 credibility of witnesses, 215, 415
 driver's manual, use by jury, 255
 expert testimony, 260, 265
 failure to call witness, 410
 false testimony, 405
 falsus in uno, 405
 general, 260
 hypothetical question, 265
 inferences, permissive, 356
 Law Note, 349
 measurements, use of, 305
 medical or scientific treatise, 261
 negative testimony, 315
 opinion of expert, 260
 physical facts, use of as, 325
 permissive inferences, 356,
 Law Note, 349
 positive testimony, 315
 presumptions, 350-356 spoliation, 400
 subsequent remedial measures, 358
 summary of, 103

WIS JI-CIVIL INDEX

(References are to Instruction Numbers.)

Evidence (continued)
weight of, 215
witness
absence of, 410
impeachment of, 420
prior conviction of, 415
prior inconsistent statement of, 420
self-incrimination of, 425
Exhibits, 50, 100
Expert testimony
general, 260
hypothetical question, 265
Express malice, defamation, 2518
Express warranty, See Products liability

F

Failure
of insured to cooperate, 3115
materiality of failure, 3116
to examine product, implied warranty, 3208
to give notice to insurer, 3117
to protest, guest, 1047
to see object in plain sight, 1070
to use safety belt, 1277
to use safety helmet, 1278
to yield roadway, slow moving vehicles, 1305
Fair Dealership Law, 2769-2772
Fair market value
defined, 1803, 8100, 8105
lands containing marketable deposits, 8102
testimony by owner, 260
False arrest
felony, 2115
False arrest
reasonable grounds to believe offense committed, 2115
False imprisonment, 2100
Falsely represent, defined, 3100
False representative, See Insurance; Misrepresentation
False testimony, willful, 405
Falsus in uno, 405
Fault, defined, ultimate fact verdict, 1001
Federal civil rights
excessive force in arrest (in maintaining jail security), 2155
Section 1981 actions, 2150
Section 1982 actions, 2150
Section 1983 actions, 2151
Fees, attorney, 3760
Felony, false arrest for, 2115
Fitness for particular purpose, warranty, 3202
Five-sixths verdict, 180
Fixed speed limits, 1290
Flammable liquid, defined, 1339
Flashing traffic signal
red, 1133
yellow, 1090
Following car, operation of, 1112
Franchise, wrongful termination of, 2770
Fraud, See also Misrepresentation

elements of, 2400, 2419
Frequent
defined, 1900.4, 1901
injury to, safe-place statute, 1900.4
negligence of, safe-place statute, 1902
Front car
duty of preceding driver to following driver, 1114
slowing, stopping and signalling, 1113
Funeral
burial expenses, wrongful death, 1850
procession, right of way, 1180
Future and past disability, damages, 1750.1, 1750.2, 1766, 1767, 1768
Future damages, present value of, 1796

G

Gas company
duties relating to company's pipes, mains, and meters, 1003
duties relating to customer's pipes or appliances, 1002
General agent, defined, 4001
General benefit, eminent domain, 8115
General disability, one question as to, 1750.2
General verdict, submission on, 106
Good faith,
duty of, 3044
Lemon law, 3300
Gratuitous bailor, negligence of, 1025.8
Green arrow, traffic signal, 1185
Green light, entering intersection with, 1191
Green or go, traffic signal, 1190
Gross negligence, See also Negligence
defined, intoxication not involved, 1006
reckless conduct, 1006, 2020
Growing crop, damage to, 1806
Guardianship, 7054, 7055, 7056, 7060, 7061
Guest
automobile
active negligence, management and control, 1047.1
drinking of intoxicants, relation to negligence, 1035
failure to protest, contributing negligence, 1047
lookout
duty of with respect to, 1075
duty to warn, 1076
placing self in position of danger, 1046

H

Handicaps, physical, duty of persons with, 1050
Headlights
automobile, 1053
railroads, 1412
Helmet negligence, 1277 (comment), 1278
Highway
defects, 8035
defects, contributory negligence, 1048 defined, 1325A
divided, defined, 1160

WIS JI-CIVIL INDEX

(References are to Instruction Numbers.)

Highway (continued)
entering from an alley or nonhighway access point, 1175
entering or crossing through highway, 1065
insufficiency, 8035
intersection, right of way, 1157
obstructions, public utility, non-energized facilities, 1395
users, right to assume due care, 1030
worker, right of way, 1265
Hiring, Negligent, 1383
Horn
duty to sound when passing vehicles proceeding in same direction, statutory, 1144
failure to sound, duty, nonstatutory, 1096
Horse, liability of owner or keeper, common law, 1391
Hospital, negligence of, in granting staff privileges, 1384
Hospital employees, negligence
injury resulting from patient's inability to look out for own safety, 1385
registered nurses and licensed technicians performing skilled services, 1023.7
suicide or injury resulting from escape or attempted suicide, 1385.5
Hospital expenses
estate's recovery for, 1850
injury to child, 1840
injury to spouse, 1825
personal injuries, 1750.1, 1750.2, 1756, 1757, 1758
wife's responsibility for own, 1830
wrongful death, 1850
Hospital licensed technicians, See Hospital employees
Host-guest relationship
agency, driver of automobile, 1600
contributory negligence of guest, placing self in position of danger, 1046
contributory negligence of guest, riding with host, 1047
danger, 1046
defective condition of car, host's liability, 1032
drinking by driver, relation to negligence, 1035
driver's management and control, limited skill, 1110
guest's duty as to lookout, 1075
joint enterprise, automobile cases, 1610
Hotel innkeeper
duty to furnish reasonably safe premises and furniture for his guests, 8051
duty to provide reasonable security, 8050
Household member, 3110
Household services, loss of, 1816, 1817
Husband
death of, damages, all items, 1861, 1870
injury to, See Spouse
Hypothetical question, expert testimony, 265

I

Ignoring judge's demeanor, 120
Illness without forewarning, 1021.2
Immunity, abrogation of torts,
Law Note, 2900

Impairment of earning capacity, See Earnings
Impeachment of witness, prior inconsistent or contradictory statements, 420
Impeding traffic
by reason of slow speed, 1300 failure to yield roadway, 1305
Implied authority, agency, 4010
Implied duty of good faith, 3044
Implied warranty, See Products liability
Imprisonment, See False imprisonment
Improper use, implied warranty, 3210
Imputed negligence, driver of automobile
agency, 1600
joint adventure (enterprise), 1610
scope of employment, 1605
Inattentive driving, 1070
Income, damages award, not taxable as, 1735
Income, loss of, 1760, 1762
Income approach, eminent domain, 8130
Incompetent person, 7054-7061
Inconvenience to landowners, eminent domain, 8125
Independent contractor
defined, 4060
liability of one employing, 1022.6
Inference,
self-incrimination, 425
spoliation, 400
Inflation, effects of, 1797
Infliction of emotional distress, 1510, 1511, 2725
Informed consent, 1023.2, 1023.3
causation, 1023.3
contributory negligence, 1007, 1023.4
dentist, 1023.15-1023.17
optometrist, 1023.15-1023.17
podiatrist, 1023.15-1023.17
duty of chiropractor, 1023.15-1023.17
duty of physician, 1023.2
suggested verdict, 1023.1
Injuries, divisible, 1722
Injury
aggravation of, because of medical malpractice, 1710
caused by subsequent event, 1725
enhancement of, 1723
from failure to wear safety belt, 1277 from fright, 1510
personal, See Damages
preexisting, aggravation or activation of, 1715
relation of collision to physical injury, 1506
to child
parents' damages for loss of child's services, 1835
parents' damages for medical expenses, 1840
parents' damages for services rendered to child, 1845
to frequenter, safe place, 1900.4
to spouse
medical and hospital expenses, 1825
wife's responsibility for own, 1830
nursing services, 1820
services, society, and companionship, 1815
Inspection, no duty of, express warranty, 3222
Insufficiency of highway or sidewalk, 8035

WIS JI-CIVIL INDEX

(References are to Instruction Numbers.)

Insurance

- agent, negligence of, 1023.6
- application for
 - false representations, 3100
 - misrepresentation with intent to deceive, 3100
- bad faith by insurance company, 2760, 2761, 2762
- breach of
 - affirmative warranty, 3100
 - promissory warranty, 3105
- failure of condition, 3105
- failure of insured to cooperate, 3115
- materiality, 3116
- failure to give notice to insurer, 3117
- materiality, 3118
- household member, 3110
- resident covered by, 3110

Intent, defined, 3100

Intentional deceit, misrepresentation, 2401

Intentional tort, 2000

- infliction of emotional distress, 2725
- interference with contract, 2780
- liability of minor, 2000
- mitigation of damages, 1732
- verdict in cases involving
 - joint tortfeasors, 1580 (comment)

Interrelationship of special verdict questions, 145

Intersection

- alley, stop emerging from, 1330
- defined, 1325A
- driver on arterial approaching, 1090
- left turn at, 1195
- lookout, 1090, 1191
- of highways, right of way, 1157
- pedestrians' right, 1158, 1159, 1160, 1165
- right of way, See Right of way
- stop at, 1325, 1325A

Intoxicants

- drinking by driver, 1035
- drinking by guest, 1040

Intoxication

- chemical tests, 1008
- not involved in gross negligence, 1006
- of driver, 1035

Intrusion, invasion of privacy, 2551

Invasion of privacy, 2550, 2551, 2552

Involuntary commitment of mentally ill person, 7050

J

Joint adventure, enterprise, automobile, 1610

Joint and several liability, 1740

Judge, See Court

Juror

- computer use by, 50
- conduct during trial, 50
- duties in general, 100-197
- knowledge, 215
- no obligation to discuss case, 197
- questions, 57

Jury

- appreciation of services, 197

- asking questions, 57

- conduct of, 50

- election of foreman, 190

- not to discuss case after verdict, 197

- note taking, 60, 61

- reaching a verdict, 190

- unable to agree, supplemental instruction, 195

- use of driver's manual, 255

- view, 152

Jury trial, right to, 1

Just compensation, eminent domain, 8100, 8105

K

Keeper or owner of animal, liability of common law, 1391

- statutory, 1390

Knowledge of juror, 215

L

Landlord-tenant, 3095

Landowner, inconvenience to, eminent domain, 8125

Latent disease or condition, activation or

- aggravation of, 1720

Lay witness, 268

Leaving curb or place of safety, pedestrian, 1255

Leaving vehicle

- off the roadway, 1115

- on the roadway, 1120

- lights, 1130

- on or off the roadway, exception to prohibition, 1125

Left side of road, driving on, 1135

- violation excused, 1140

Left turn at intersection, 1195, 1352

Legal nonconforming use, eminent domain, 8140

Lemon Law, 3300, 3301, 3302, 3303, 3304

Liability

- of abettor, battery, 2007

- of dog (animal) owner or keeper, common law, 1391

- of dog owner or keeper, statutory, 1390

- of employer, 4055

- of host, defective condition of car, 1032

- of minor, intentional tort, 2000

- of one employing independent contractor, 1022.6

- of principal for acts of agent, See Agency

- of proprietor for injury to patron caused by third person, 8045

Libel, See Defamation

Licensed technician, negligence of, 1023.7

Life expectancy and mortality tables, 1795

Lights, motor vehicle

- directional signals, 1350

- flashing red, school bus, 1133

- headlights, equipment, and maintenance, 1053

Limitations period, 950

Limited skill and judgment of host driver, 1110

Livestock

- on highway, 1200 right of way, 1200

Long term care providers, damages, 1757, 1815, 1870, 1897

Loitering on roadway, thumbing rides, 1250

WIS JI-CIVIL INDEX

(References are to Instruction Numbers.)

Lookout

- approaching flashing yellow traffic signal, 1090
- ascertainment that movement can be made with reasonable safety, 1354
- backing, 1060
- camouflage, 1056
- driver on arterial approaching intersection, 1090
- entering intersection on green light, 1191
- entering or crossing through highway, 1065
- failure to see object in plain sight, 1070
- guest, 1075
- guest's duty to warn, 1076
- limited duty
 - on private property, 1080
 - to rear, 1114
- on through highway, 1090
- passing, vehicles proceeding in same direction, 1141
- pedestrian, 1095
- turn or deviation, 1354

Loss of

- access, eminent domain, 8105
- child's services, 1835
- earnings, See Earnings
- society and companionship of domestic partner, 1870 (comment)
- society and companionship of spouse, 1815, 1870
- society and companionship of parent, 1838
- use of automobile, not repairable, 1801
- use of repairable automobile, 1800

M

Magnuson-Moss Claim, 3310

Maintenance and equipment of vehicles, See Equipment and maintenance of vehicles

Maintenance workers on highway, 1265

Malice

- defined, 1707
- express, defamation, 2513
- punitive damages, 1707, 1707A

Malicious prosecution

- advice of counsel as defense, 2610, 2611
- elements, 2600, 2605
- instituting civil proceeding, 2605
- instituting criminal proceeding, 2600

Malpractice

- aggravation of injury because of medical malpractice, 1710
- attorney, 1023.5, 1023.5A
- cause, medical, informed consent cases, 1023.3
- chiropractor, 1023.8, 1023.9
- dentist, 1023.14
- nurse, 1023.7
- physician, 1023
- professional, 1023.5
- psychiatrist, 1023 (comment)
- res ipsa loquitur, 1024

Management and control

- defined, 1105

Wisconsin Court System, 2021

- in an emergency, 1105A

- negligence of guest, active, 1047.1

Manufacturer, negligence of, See Products liability

Market value, property damaged, 1804, 1805

Master and servant, See Servant

Measurements, evidence, 305

Medical expenses, See Hospital expenses

Medical negligence, 1023

- informed consent, 1023.2

- informed consent, cause, 1023.3

- res ipsa loquitur, 1024

Medical technician, See Hospital employees

Medical treatise, 261

Meeting and passing

- position on highway, 1135

- violation excused, 1140

Meeting at intersection of highways, right of way, 1155

Member of household, 3110

Mentally disabled, See also Protective placement

- contributory negligence of, 1007, 1021, 1385.5

- involuntary commitment, 7050

- negligence of, 1021

Merchantability, defined, 3201

Middle burden of proof, 205

Military convoys, right of way, 1180

Minor

- attractive nuisance, 1011

- death of, pecuniary loss, 1890

- liability of, intentional tort, 2000

- parents' duty

- to control, 1013

- to protect, 1012

Misrepresentation, fraud

- bases for liability and damages, 2400

- damages, measure of, in actions involving sale or exchange of property, 2405

- damages, out-of-pocket rule, negligent

- misrepresentation, 2406

- intentional deceit, elements of fraud, 2401

- negligence, 2403

- property loss (Wis. Stat. § 895.80), 2419

- strict responsibility, 2402

- under Wis. Stat. § 100.18, 2418

- unfair trade practice, 2418

- verdicts suggested, 2402, 2403

- insurance

- application with intent to deceive, 3105

- in application for insurance, 3100

Mistake of fact, mutual, avoidance of contract, because of, 3072

Mitigation of damage,

- breach of contract, 1731

- intentional torts, 1732

- negligence, 1731

- physical injuries, 1730

Modification or exclusion of the implied warranty, 3205

Mortality tables and life expectancy, 1795

Motor vehicles, See specific headings

Moving from parked position, 1205

Multiple driver-multiple guest comparison, 1591

- recommended questions, 1592

Municipality, creating or maintaining nuisance, 1922

(Release No. 52)

WIS JI-CIVIL INDEX

(References are to Instruction Numbers.)

Mutual mistake of fact, avoidance of contract,
because of, 3072

N

Negative testimony, defined, 315

Negligence

attorney, 1023.5, 1023.5A

bailee, 1026

for hire, 1025.6

for mutual benefit, 1025.7

inferred, 1026

bailor, 1026.8

building contractor, 1022.4

bus driver, 1025

carrier

common, 1025

negligence presumed, 1026.5

children, 1010

chiropractor, 1023.8, 1023.9

common carrier, 1025

comparative, See also Comparative negligence

adult and child, 1582

basis of comparison, 1580

multiple driver-multiple guest comparison, 1591

recommended questions, 1592

where negligence or cause question has been

answered by the court, 1595

contributory, See also Contributory negligence

defined, 1007

highway defect, 1048

of guest

drinking by, 1035

failure to protest, 1047

in informed consent case, 1021

placing self in position of danger, 1046

of mentally disabled person, 1021

of plaintiff frequenter, safe-place statute, 1902

sidewalk defect, 1049

defamation, 2509

defined, 1005

dentist, 1023.14

diagnosis, 1023.4

driver, See individual headings

duty of

agent to principal, 4020

buyer, 3254

consumer, 3254

driver

approaching intersection when yellow light
shows, 1192

at railroad crossing, 1336

children, when present, 1045

drinking, 1035

entering intersection with green light in his

or her favor, 1191

entering or crossing arterial highway, 1065

following another car, 1112

front car, 1114

slowing, stopping, or signalling, 1113

highway defect or insufficiency, 1048

horn, to sound, 1012

lookout

defined, 1055

private property, 1080

management and control, 1047.1, 1105

speed, obstructed vision, 1310

speed, nighttime, 1315

to see defects, 1048

employer, in hiring, training, or supervising, 1383

employer, safe-place statute, 1900.4

frequenter, safe-place statute, 1902

gas company

relating to company's pipes, mains, and

meters, 1003

relating to customer's pipes or appliances,

1002

guest, See Contributory negligence; Guest

highway defect, 1049

hiring, 1383

hospital employees

employees, 1385, 1385.5

registered nurses and technicians, 1023.7

hotelkeeper, to furnish reasonably safe premises

and furniture for his guests, 8051

informed consent, 1023.1-1023.4, 1023.15-

1023.17

insurance agent, 1023.6

jurors, in general, 100-195

licensed technician, 1023.7

manufacturer, See Products liability mentally ill,

1021

mitigate damages, injured person, 1730, 1731

municipality, highway or sidewalk defects and

insufficiency, 8035

nurse, 1023.7

owner

of building on public highway, 8030

of land to user, 8020

of place of amusement, 8040

of place of business, duty to protect patrons,
8045

of public building, safe place, 1904

of public business, not safe place, 8040

of vehicle, to equip and maintain, 1052

to trespasser, 8025

parent

to control minor child, 1013, 1014

to protect minor child, 1012

pedestrian, See also Right of way

lookout, 1095

sidewalk defect or insufficiency, 1049

physically handicapped persons, 1050

place of amusement, owner, 8040

place of business, owner's duty to protect patrons,
8045

possessor of land to user, 8012

private nuisance, 1920

proprietor for injury to patron caused by third
person, 8045

WIS JI-CIVIL INDEX

(References are to Instruction Numbers.)

Negligence (continued)

- public utility, highway obstructions, non-energized facilities, 1395
- railroad crossing, driver's duty, 1336
- railroad, See Railroads
- registered nurse, 1023.7
- restaurant operator, sale of food containing harmful natural ingredients, 3248
- risk contribution, 3294, 3295
- school bus driver
 - and other drivers when bus is stopped, 1132
 - to display flashing red signals when bus is stopped, 1133
- seller, See Products liability
- sensory handicapped persons, 1050
- sidewalk defect, 1048
- subsequent remedial measures, 358
- superior skills doctrine, 1005
- supervision, 1383
- teacher
 - to instruct or warn, 1380
 - to supervise students, 1381
- technicians, 1023.7
- training, 1383
- worker, preoccupation in work minimizes duty, 1051
- emergency doctrine, 1105A
- employer, in hiring, 1383
- employer, in supervising, 1383
- employer, in training, 1383
- employer, safe place, 1900.2
- entrustment, 1014, 1014.5
- evidence of custom and usage, 1019
- fault, ultimate fact verdict, 1001
- frequentur, safe place, 1902
- gas company
 - relating to company's pipes, mains, and meters, 1003
 - relating to customer's pipes and appliances, 1002
- gross, See Gross negligence
- handicapped persons
 - physical, 1050
 - sensory, 1050
- highway defect or insufficiency, 1048
- highways and sidewalks, care of, 8035
- hospital
 - employees, 1385, 1385.5
 - registered nurses and technicians, 1023.7
- imputed, See Imputed negligence
- independent contractor, liability of one employing, 1022.6
- infliction of emotional distress, 1510, 1511
- informed consent, 1023.1, 1023.2, 1023.3, 1023.4
- intentional acts compared to, 1004, 2001
- lookout, 1055
- malpractice
 - attorney, 1023.5
 - chiropractor, 1023.08
 - dentist, 1023.14
 - physician, 1023
 - res ipsa loquitur, 1024
- management and control, 1047.1, 1105
- manufacturer, See Products liability
- mentally ill, 1021, 1385.5
- misrepresentation, 2403
- municipality
 - highway and sidewalk defect, 8035
 - highway and sidewalk insufficiency, 8035
 - nuisance, 1922
- owner, See Owner
- owner of animal
 - common law, 1391
 - statutory, 1390
 - per se*, 950
- physically handicapped person, 1050
- physician, malpractice by, 1023
- res ipsa loquitur, 1024
- plaintiff frequentur, 1902
- product user, 3268
- psychiatrist, 1023 (comment) question answered by court, 155
- res ipsa loquitur
 - defined, 1145
 - malpractice, physician, 1024
- rescuer, 1007.5
- restaurant operator, sale of food containing harmful natural ingredients, 3248
- right to assume due care by highway users, 1030
- seat belt, failure to use, 1277
- seller, See Products liability
- sensory handicapped persons, 1050
- sidewalk defect, duty of pedestrian, 1049
- speed, See Speed
- sports participant, 2020
- strict liability, 3260
- supplier, See Products liability
- taxicab driver, 1025
- teacher
 - instruct or warn, 1380
 - supervise students, 1381
- user, strict liability, 3260
- violation of safety statute, 1005, 1009
- worker, preoccupation in work minimizes duty, 1051

Negligent

- conduct contrasted to intentional conduct 1004, 2001
 - entrustment, 1014, 1014.5
 - hiring, 1383
 - infliction of emotional distress, 1510, 1511
 - misrepresentation, 2403
 - supervising, 1383
 - training, 1383
- Nominal damages, 1810
- Nonconcurrent or successive torts
 - divisible injuries from, 1722
- Nonconforming use, legal, eminent domain, 8140
- Nonexpert witness, 268
- Nonhighway access, emerging from, 1270
- No passing zone, vehicles proceeding in same direction, 1143
- Normal response, cause, 1501
- Notetaking by jury, 60, 61
- Notice
 - actual or constructive, as to defect, 1900.4
 - of breach, implied warranty, 3211

WIS JI-CIVIL INDEX

(References are to Instruction Numbers.)

Notice (continued)
of municipality with respect to highway or sidewalk defects, 8035
timeliness of, breach of warranty, 3211
to third parties of termination of agency, 4028

Nuisance
attractive, 1011, 8025
private, 1920, 1922, 1924, 1926
public, 1920, 1928, 1930, 1932

Nursing services
personal injury, 1756, 1758
injury to spouse, 1820

O

Objections of counsel
instruction at conclusion of trial, 115
preliminary instruction, 50
Obstructed view, passing, 1142
Obstructed vision, driver, speed, 1310
nighttime, 1315
Offensive bodily contact, battery, 2005.5
Offer, making, 3012
Opening instruction, 100
Opening statements of counsel, See Preliminary instructions before trial
Opinion of nonexpert witness, 268
Optometrist, duty to inform patient, 1023.15-1023.17
Order(s), See Court
Order of proof, See Preliminary instructions before trial
Ordinary burden of proof, 200, 202
Ordinary care
defined, 1005
varies with circumstances, 1020
Out-of-pocket
rule damages, 3710
negligence misrepresentation, 2406
Owner
dog, 1390
duty to trespasser, 8025
duty to user, 8020
of building abutting on a public highway, 8030
of place of amusement, common law, 8040
of place of business, duty to protect patrons, 8045
of place of employment, safe place, 1900.4
of public building, safe place, 1904
of public business not under safe-place statute, 8040
of vehicle, 1600
permission for use of automobile, 3112
testimony of, to establish value, 260 (comment)

P

Pain and suffering, damages
estate's recovery for, 1855
future, 1768
past, 1766, 1768
past and future disability, 1750.1, 1750.2, 1756, 1767
Parent
damages
adult child, pecuniary loss, 1885

loss of society and companionship, 1895
minor child
postmajority pecuniary loss, 1892
premajority pecuniary loss, 1890
death of, pecuniary loss, 1880
injury to child
loss of child's services, 1835
loss of society and companionship, 1837
medical expenses, 1840
services rendered to child, 1845
injury to parent, 1838
death of, child's loss of society and companionship, 1897
duty of
to control minor child, 1013, 1014
to protect minor child, 1012
paternity, 5001
Parked position, moving from, 1205
Parked vehicle
disabled vehicle, 1125
leaving off the roadway, 1115
leaving on or off the roadway, exception to prohibition, 1125
leaving on the roadway, 1120
yield right of way to moving vehicles, 1205
Parties to lawsuit, 50
Partnership, defined, 4080
Passenger, See Guest
Passing, vehicles proceeding in same direction
lookout, 1141
no passing zone, 1143
obstructed view, 1142
overtaken vehicle turning left, 1143
signal, return to right-hand lane, 1144
Paternity, 5001
Pecuniary loss
death of
adult child, 1885
domestic partner, 1861
husband, 1861
minor child, 1890
parent, 1880
spouse, 1861
wife, 1861
Pedestrian
crossing railroad tracks, 1337.5
lookout, 1095
right of way, See Right of way
sidewalk defect, contributory negligence, 1049
standing or loitering on highway, 1250
suddenly leaving curb or place of safety, 1255
walking on highway, position on highway, 1260
Permission of owner for use of automobile, 3112
Permissive inferences, 356
Law Note, 349
Personal injury, See Damages
Personal property, See Property damage
Persons in specific situations, duties of, 1030-1355
Persons with physical handicaps, duties of, 1050
Physical danger
in field of, 1510
Physical facts, 325

WIS JI-CIVIL INDEX

(References are to Instruction Numbers.)

- Physical handicaps, duty of persons with, 1050
- Physical injury, relation of collision to, 1506
- Physician
 - duty to inform patient, 1023.2
 - medical malpractice, 1023
 - negligence of hospital in granting staff privileges to, 1384
 - standard of skill, 1023
- Place of business, owner's duty to protect patrons, 8045
- Place of employment, safe-place statute, 1910
- Plaintiff frequenter, negligence of, safe-place statute, 1902
- Podiatrist, duty to inform patient, 1023.15-1023.17
- Point of access, defined, 1175
- Position and method of turn to right or left, 1352
- Position on highway
 - on meeting and passing, 1135
 - violation excused, 1140
- Positive testimony, defined, 315
- Possessor
 - consent of to another's being on his premises, 8015
 - of land, duty to user, 8020
- Post-traumatic disorder, 1511, 1770
- Posted speed limit, 1290
- Preceding car
 - duty of driver to following driver, 1114
 - slowing, stopping, signalling, 1113
- Preexisting injury, aggravation of, 1715
- Preliminary instructions before trial, 50
- Preoccupation in work minimizes duty of worker, 1051
- Present value of future damages, 1796
- Presumption, negligence
 - res ipsa loquitur, 1145
 - res ipsa loquitur, malpractice, physician, 1024
- Presumptions
 - and permissive inferences
 - Law Note, 349
 - basic fact conflict, possibility of nonexistence of presumed fact, 350
 - basic fact conflict, presumed fact may be inferred, 354
 - basic fact uncontradicted, possibility of nonexistence of presumed fact, 352
 - due care by decedent, 353 medical expenses, 1756, 1757
 - possibility of nonexistence of presumed fact, basic fact conflict, 350
 - possibility of nonexistence of presumed fact, basic fact uncontradicted, 352
 - presumed fact may be inferred, basic fact conflict, 354
 - servant status from ownership of vehicle, 1600
- Principal, and agent, See Agency
- Prior conviction of witness, 415
- Prior inconsistent or contradictory statements, 420
- Privacy, invasion of, 2550, 2551, 2552
- Private driveway, emerging from or other nonhighway access, 1335
- Private nuisance, 1920, 1922, 1924, 1926
- Private property, lookout, limited duty on, 1080
- Privilege
 - against self-incrimination, 425
 - conditional, abuse of, defamation, 2507
 - invasion of privacy, 2552
 - public official, abuse of, defamation, 2509
- Probable cause, malicious prosecution, 2600, 2610
- Process, abuse of, 2620
- Procession, funeral, right of way, 1180
- Products liability
 - allergy of user, 3209, 3260 (comment)
 - basis, 3200
 - breach of warranty, notice of, implied warranty, 3211
 - business defined, strict liability, 3264
 - buyer, duty of, 3254
 - consumer, duty of, 3254
 - contributory negligence, strict liability, 3268
 - defect, use of product after defect known, 3207
 - exclusion by reason of course of dealing or usage of trade, 3206
 - exclusion or modification, 3205
 - express warranty
 - general, 3220
 - no duty of inspection, 3222
 - statement of opinion under Uniform Commercial Code, 3225, 3230
 - implied warranty
 - allergy of user, 3209
 - by reason of course of dealing or usage of trade, 3203
 - exclusion by reason of course of dealing or usage of trade, 3206
 - failure to examine product, 3208
 - fitness for particular purpose, 3202
 - food, sale of, 3204
 - improper use, 3210
 - merchantability, defined, 3201
 - notice of breach, 3211
 - use of product after defect known, 3207
 - negligence
 - duty of buyer, 3254
 - duty of consumer, 3254
 - duty of manufacturer, 3240
 - duty of manufacturer to give adequate instructions as to the use of a complicated machine (product), 3244
 - duty of manufacturer (seller) to warn of dangers with respect to intended use, 3242
 - duty of manufacturer (seller) who undertakes to give instructions as to the use of a machine (product), 3246
 - duty of restaurant operator in sale of food containing harmful natural ingredients, 3248
 - duty of seller installing (servicing) a product, 3250
 - duty of seller to warn of dangers of product with respect to intended use, 3242
- punitive damages, 1707A, 1707.2
- Restatement, Third, of Torts, 3260 (comment)
- risk contribution theory, 3294, 3295, 3296
- strict liability
 - comparative negligence, 3290, 3290.1
 - contribution, 3290 (comment)
 - contributory negligence of user, 3268, 3290, 3290.1
 - definition of business, 3264
 - duty of manufacturer to ultimate user, 3260, 3260.1

WIS JI-CIVIL INDEX

(References are to Instruction Numbers.)

Products liability (continued)
 duty of manufacturer (supplier) to warn, 3260.1, 3262
 duty of supplier to warn, 3260.1, 3262
 suggested special verdict, 3290, 3290.1
Professional earnings, loss of, 1760, 1762
Proof, burden of, See Burden of proof
Property
 automobile
 damages to, 1805
 loss of use, not repairable, 1800
 loss of use, repairable, 1801
 eminent domain, See Eminent domain
 personal
 damage to, 1804
 damage to, property not repairable, 1805
 destruction of, 1803
 relation of property owners to others, 1900.4, 1904, 8012
 with market value, 1805
 without market value, 1803
Property loss through misrepresentation, 2419
Proprietor of business, duty to protect person from
 injury by act of third person, 8045
Prosecution, malicious, See Malicious prosecution
Protective placement, 7060
Protective services, 7061
Protest, failure to on part of guest, 1047
Proximate cause, 1500
Psychiatrist, negligence of, 1023 (comment)
Public building, safe-place statute, 1904
Public business, not under safe-place statute, duties of
 owner, 8040
Public nuisance, 1920, 1928, 1930, 1932
Public official, defamation, abuse of privilege, 2509
Public utility, duty of, highway obstructions, nonenergized
 facilities, 1395
Publication, defamatory effect of, 2514
Puffing, 3225
Punitive damages
 defamation, 2520
 intentional disregard, 1707.1
 malice, 1707, 1707.1
 mitigation of, by provocation of battery, 1708
 outrageousness, 1707
 products liability, 1707A, 1707.2
Purchaser, breach of contract by, 3750

Q

Quantum meruit, 1812
Questions,
 answered by the court
 damages, 150
 negligence, 155
 by juror, 57
 special verdict, interrelationship, 145

R

Racing, 1107

Wisconsin Court System, 2021

Railroads
 crossing
 driver's duty, 1336
 duty of train crew approaching crossing, 1405
 duty to maintain open view at, 1411
 nonoperation of signals, 1338
 signs, duty to maintain, 1410
 special vehicles required to stop at all crossings, 1339
 ultrahazardous or unusually dangerous, increased
 duty, 1413
 vehicles stopping at signals, 1337
 duty to blow whistle
 outside municipality, 1402
 within municipality, 1403
 duty to ring bell within municipality, 1401
 headlights, duty to have proper, 1412
 pedestrian crossing tracks, 1337.5
 speed
 fixed limits, 1407
 negligent, causation, 1409
 no limit, 1408
Ratification
 by master of servant's wrongful acts done outside
 scope of employment, 4050
 of agent's acts by principal, 4015
Rear car, operation of, 1112
Rear lookout, limited duty, 1114
Reasonable grounds to believe offense committed, defined,
 2115
Recording played to the jury, 80
Red traffic control light, 1193
 flashing, 1193.5
 signalling stop, 1193
Reduce speed
 obstructed vision, 1310
 nighttime, 1315
 reasonable and prudent speed, 1285
Reference to insurance company by counsel, 125
Registered nurse, See Hospital employees, negligence
Relation of collision to physical injury, 1506
Release, agreement, avoidance of for mutual mistake of
 fact, 3072
Rental income, capitalization of, 8130
Representations, false, See Misrepresentation
Reproduction
 costs, eminent domain, 8135
Res ipsa loquitur
 defined, 1145
 malpractice, medical, 1024
 permissive inference, 356
Rescuer, contributory negligence of, 1007.5
Resident, defined, 3110
Response, normal, cause, 1501
Responsibility, strict, misrepresentation, 2402
Restatement, Third, of Torts, effect on products liability,
 3260 (comment)
Restaurant operator, duty of, in sale of food containing
 harmful natural ingredients, 3248
Restraint of will, 2822
Right-hand lane, return to, after passing, vehicles
 proceeding in same direction, 1144

(Release No. 52)

WIS JI-CIVIL INDEX

(References are to Instruction Numbers.)

- Right of way
 - auto
 - at intersection of highways, nonarterial, 1155
 - at intersection of highways, nonarterial, ultimate fact question, 1157
 - at intersection with through highway, 1153
 - emergency vehicle approach of, 1210
 - entering highway from an alley or nonaccess points, 1175
 - funeral procession, 1180
 - green arrow, 1185
 - green or go signal, 1190
 - left turn at intersection, 1195
 - livestock, 1200
 - meeting at intersection, 1155
 - military convoy, 1180
 - moving from parked position, 1205
 - vehicles using alley or nonhighway access, 1270
 - when yield sign installed, 1275
 - highway worker, 1265
 - livestock, 1200
 - pedestrian
 - at intersections or crosswalks on divided highways provided with safety zones, 1160
 - at uncontrolled intersections or crosswalks, 1165
 - blind pedestrian on highway, 1170
 - control signal, 1159, 1220
 - crossing at controlled intersection, 1158, 1225
 - crossing at place other than crosswalk, 1095, 1230
 - divided highways or highways with safety zones, 1235
 - duty of
 - at pedestrian control signals, 1220
 - crossing at controlled intersection or crosswalk, 1225
 - crossing roadway at point other than crosswalk, 1230
 - green arrow, facing, 1240
 - red or stop signal, facing, 1245
 - standing or loitering on highway, 1250
 - to stop when vehicle using alley or nonhighway access, 1270
 - uncontrolled intersection or crosswalk, suddenly leaving curb or place of safety, 1255
 - walking on highway, 1260
 - walk signal, 1159
 - when yield sign installed, 1275
 - persons working on highway, 1265
 - Right side of roadway
 - meeting and passing, 1135
 - Right side of roadway, meeting and passing
 - violation excused, 1140
 - Right to assume due care by highway users, 1030
 - Risk contribution theory, 3294, 3295, 3296
 - Roadway, defined, 1160
- S**
- Safe-place statute
 - business, 1910
 - Wisconsin Court System, 2021
 - control, 1911
 - duty of employer, 1900.2
 - frequentener
 - defined, 1901
 - injury to, 1900.4
 - negligence of
 - employer, 1900.4
 - owner of place of employment, 1900.4
 - owner of public building, 1904
 - plaintiff frequentener, 1902
 - place of employment, defined, 1910
 - public building, defined, 1904
 - public business not under, duties of owner, 8040
 - Safety belt, failure to use, 1277
 - Safety, defined, 1900.4-1904
 - Safety helmet negligence, 1277 (comment), 1278
 - Safety statute, 1005, 1009
 - Safety zone, defined, 1160
 - Sale of food, implied warranty, 3204
 - Sales, comparable, eminent domain, 8120
 - Scene, view of, by jury, 152
 - Scientific treatises, 261
 - School bus
 - flashing red warning lights, 1133
 - stop for, 1340
 - stopped, position on highway, 1132
 - School zone, speed, 1290
 - Scope of employment
 - driver, 1605
 - servant
 - defined, 4030
 - going to and from place of employment, 4040
 - master's ratification of wrongful acts done outside of, 4050
 - while traveling, 4050
 - Seat belt, failure to use, 1277
 - Section 1983, 2151, 2155
 - Self-defense
 - battery, 2006
 - defense of property, 2006.5
 - Self-incrimination, 425
 - Seller
 - breach of contract by, damages, 3755
 - negligence of, duty of, See Products liability
 - Sensory handicaps, duty of persons with, 1050
 - Servant, See also Scope of employment
 - defined, 4030
 - driver of automobile, 1600
 - Services rendered to child, past and future, 1845
 - Services, society and companionship
 - death of child, 1895
 - death of spouse, 1870
 - injury to spouse, 1815
 - Severance damages, eminent domain, 8102, 8103
 - Sidewalk
 - defect, contributory negligence, 1049
 - defects, 8035
 - insufficiency, 8035
 - Signal, required
 - audible warning when passing, 1144
 - deviation, 1350
 - school bus, flashing red, 1133
 - slow or stop, 1113

WIS JI-CIVIL INDEX

(References are to Instruction Numbers.)

- Signal, required (continued)
 - turn, 1350
- Signals, railroad crossing
 - non-operation of, 1338
 - stop at, all vehicles, 1337
- Signals, traffic control, See Traffic signals
- Signs
 - railroad crossing, duty to maintain, 1410
 - stop, 1325, 1325A
- Skidding, 1280
- Slander, See Defamation
- Slow moving vehicles, 1300
- Society and companionship
 - death of child, 1895
 - death of parent, 1897
 - death of spouse, 1870
 - injury to minor child, 1837
 - injury to parent, 1838
- Special agent, defined, 4002
- Special benefits, eminent domain, 8115
- Special circumstances, negligence under, 1020
- Special knowledge and skills doctrine, 1005 (comment)
- Special verdict
 - five-sixths verdict, 180
 - informed consent, 1023.1, 1023.15
 - Lemon Law, 3300
 - mentioned in court's opening statement, 100
 - questions, interrelationship, 145
 - recommended, comparative negligence, multiple
 - driver-multiple guest comparison, 1592
 - risk contribution, 3294
 - suggested
 - misrepresentation, 2402, 2403
 - strict liability, 3290
 - ultimate fact verdict, 107
 - when court finds one or more parties at fault, 108
- Speed
 - camouflage, 1320
 - driver on arterial not bound to reduce speed when
 - approaching intersection, 1090
 - failure to yield roadway, 1305
 - fixed limits, 1290
 - impeding traffic, 1300
 - obstructed vision, 1310
 - nighttime, 1315
 - posted limit, 1290
 - reasonable and prudent, reduced speed, 1285
 - school zone, 1290
 - slow-moving vehicles, 1305
 - special restrictions for certain vehicles, 1295
- Speed, railroads
 - fixed limits, 1407
 - negligent speed, causation, 1409
 - no limit, 1409
- Spendthrift, 7056
- Spoilation of evidence, 400
- Sports participant injury, 2020
- Spouse
 - death of
 - loss of society and companionship, 1870
 - medical, hospital, and funeral expenses, 1875
 - pecuniary loss, 1861, 1861
- injury to
 - household services, loss of, 1816, 1817
 - medical and hospital expenses, 1825
 - wife's responsibility for own, 1830
 - nursing services, 1820
 - services, society, and companionship, 1815, 1816, 1817
- Standing on highway, pedestrian's duty, 1250
- Statement of opinion, express warranty, 3225
- Statement, slander, See Defamation
- Statute of Limitations, 950
- Stop
 - at intersection, 1325, 1325A
 - at railroad crossing signals, 1337
 - duty of preceding driver to signal, 1113
 - emerging from an alley, 1330
 - emerging from a private driveway or other
 - nonhighway access, 1335
 - for school bus, 1340
 - leaving vehicle off roadway, 1115
 - non-operation of railroad crossing signals, 1338
 - parking on or off roadway, exception to
 - prohibition, 1125
 - parking on roadway, 1120
 - pedestrian crossing railroad tracks, 1337.5
 - special vehicles at all railroad crossings, 1339
 - train whistle within municipality, 1403
- Stopped school bus, 1132
- Stopping and leaving vehicle
 - off roadway, 1115
 - on or off roadway, exception to prohibition, 1125
 - on roadway, 1120
- Stricken testimony, 130
- Strict liability, See Products liability
- Strict responsibility, misrepresentation, 2402
- Submission on general verdict, 106
- Submission on ultimate fact verdict, 107
 - when court finds one or more parties at fault, 108
- Subsequent event causing further injury, 1725
 - Subsequent remedial measures, 358
- Successive or nonconcurrent torts
 - injuries from, 1722
- Suddenly leaving curb or place of safety, 1255
- Summary exhibit, 103
- Superior skills doctrine, 1005
- Supervising, negligence in, 1383
- Supplemental instruction on agreement, 195

T

- Taxicab driver, negligence of, 1339
- Teacher, duties
 - to instruct or warn, 1380
 - to supervise students, 1381
- Tenant, constructive eviction of, 3095
- Termination
 - agency
 - general, 4027
 - notice to third parties, 4028
 - dealership, 2770

WIS JI-CIVIL INDEX

(References are to Instruction Numbers.)

Termination (continued)
 employment, See Wrongful discharge
 franchise, 2770

Testimony
 expert
 general, 260
 hypothetical question, 265
 negative, 315
 positive, 315
 stricken, 130

Tests, intoxication, chemical, 1008

Textbooks, 261

Theft by contractor, 2722

Through highway, lookout on, 1065, 1090

Timeliness of notice, breach of warranty, 3211

Tort, See individual heading

Tortious interference with contract, 2780

Traffic signals or signs flashing red, 1133
 flashing yellow, 1090
 green arrow, 1185
 green light, 1190
 pedestrian, duty of
 pedestrian control, 1220
 red light, pedestrian facing, 1245
 stop sign, 1245
 walk signal, 1159
 red flashing, 1090
 red light, 1245
 stop sign, 1325, 1325A
 yellow flashing, 1090
 yellow light, 1192
 yield sign, 1275

Training, negligence in, 1383

Treatises, 261

Trespass
 nominal damages, 1810
 verdicts, 8026, 8027

Trespasser
 attractive nuisance, 1011, 8025
 children, 1011, 8025
 consent, 8015
 defined, 8012
 duty of owner to, 8025

Truth as defense to defamation, 2505, 2505A

Turning movements
 ascertainment that turn can be made with reasonable
 safety, 1354
 deviation from clearly indicated traffic lanes, 1355
 directional signals, 1350
 left turn, 1195
 lookout, 1354
 overtaken vehicle turning left, passing, 1143
 position and method when not otherwise marked or
 posted, 1352
 signal required, 1350

U

Ultimate fact question, attractive nuisance, 1011

Ultimate fact verdict, See also Special verdict
 fault, defined, 1001

 submission on, 107, 108

Ultimate verdict question, right of way at intersection of
 nonarterial highways, 1157

Ultrahazardous or unusually dangerous railroad crossings,
 increased duty, 1413

Unavoidable accident, 1000

Uncontrolled intersection or crosswalk, right of way, 1165

Unfair trade practice (Wis. Stat. § 100.18), 2418

Uniform Commercial Code, express warranty under, 3230

Unit rule, 8100, 8101

Unity of use, two or more parcels, severance damages,
 8104

Unjust enrichment, 3028

Unlawful, defined, false imprisonment, 2100

Unreasonably dangerous, defined, 3200, 3260

Usage of trade, implied warranty, 3203

Use
 improper, implied warranty, 3210
 legal nonconforming, eminent domain, 8140
 of product after defect known, 3207

User, contributory negligence, strict liability, 3268

V

Value, fair market, 8100
 expert testimony to establish, 260

Vehicles
 distance between, 1112
 equipment and maintenance of
 brakes, 1054
 general duty, 1052
 headlights, 1053
 horn, 1096
 following, 1112
 lemon law and, 3300, 3301, 3302, 3303, 3304
 parked, See Parked vehicles
 passing, proceeding in same direction, See Passing
 position and method when turning, 1352
 slow moving, 1300, 1305
 stopping, See Stop; Stopping and leaving vehicle

Vehicular traffic, defined, 1185

Verdict
 case involving intentional and negligent joint
 tortfeasors, 1580 (comment)
 dissenting juror to sign, 180 five-sixths, 180
 general, 106
 product liability, 3290, 3290.1
 risk contribution, 3295, 3296
 special, question, interrelationship, 145
 suggested special
 misrepresentation, 2402, 2403
 strict liability, 3290
 ultimate fact
 fault, 1001
 submission on, 107
 when court finds one or more parties at fault, 108

Vicarious liability of employer, 4055

View
 by jury, 152
 railroads duty to maintain open view, 1411

Violation of safety statute, 1005, 1009

WIS JI-CIVIL INDEX

(References are to Instruction Numbers.)

Vision, obstructed, speed, 1310
 nighttime, 1315
Voluntary assumption of duty, 1397

W

Wages, See Earnings
Walking on highway, pedestrian's duty, 1260
Walk signal, pedestrian, 1159
Warn
 guest's duty to, 1076
 teacher's duty to, 1380
Warrant, arrest without, false arrest
 felony, 2115
Warranty claim, Magnuson-Moss, 3310
Warranty, express or implied, See Products liability
Weight of evidence, 215
Whistle, railroads, duty to blow
 outside municipality, 1402
 within municipality, 1403
Wife
 death of
 loss of society and companionship, 1870
 medical, hospital and funeral expenses, 1875
 pecuniary loss, 1861
 injury to
 medical and hospital expenses, 1825
 wife's responsibility for own, 1830
 nursing services, 1820
 services, society, and companionship, 1815
Witness
 absent witness, 410
 contradictory statements, 420
 credibility of, 50, 215
 expert testimony
 general, 260
 hypothetical question, 265
 falsus in uno, willful false testimony, 405
 impeachment of witness, prior inconsistent or
 contradictory statements, 420
 opinion of nonexpert, 268
 prior conviction, 415
 self-incrimination, 425
 spoliation of evidence by, 400
Working on highway, 1265
Worker
 preoccupation in work minimizes duty, 1051
 when required to work in unsafe premises, 1051.2
Wrongful death
 adult child, pecuniary loss, 1885
 child, parents' loss of society and companionship,
 1895
 domestic partner, 1861, 1870 (comment)
 estate's recovery
 medical, hospital, and funeral expenses, 1850
 pain and suffering, 1855
 husband's death, all items, 1861
 minor child, pecuniary loss, 1890
 parent, child's loss of society and companionship,
 1897

parent, pecuniary loss, 1880
spouse, loss of society and companionship, 1870
wife
 medical, hospital, and funeral expenses, 1875
 pecuniary loss, 1861
Wrongful discharge, 2750
Wrong side of road, driving on, 1135
 violation excused, 1140

Y

Yellow flashing signal, 1090
Yellow light, duty of driver, 1192
Yield sign, 1275