

152 VIEW OF SCENE

We are visiting (describe where) to help you understand and weigh evidence that will be introduced during the trial. What you will see today is not evidence and should not be considered by you as evidence. During the trip or while we are at the scene, do not discuss this case or what you see with anyone. Only I or someone at my direction may talk to you.

Stay with the other jurors during the trip. Do not conduct an independent investigation of (describe where) today or at any time during the trial.

COMMENT

This instruction and comment were approved in 2000 and revised in 2010.

Wis. Stat. § 805.08(4) forms the statutory basis for this instruction:

On motion of any party, the jury may be taken to view any property, matter or thing relating to the controversy between the parties when it appears to the court that the view is necessary to a just decision. The moving party shall pay the expenses of the view. The expenses shall afterward be taxed like other legal costs if the party who incurred them prevails in the action. (Emphasis supplied.)

Whether or not a view is to be conducted is within the discretion of the trial judge. See American Family Mut. Ins. Co. v. Shannon, 120 Wis.2d 560, 567-569, 356 N.W.2d 175 (1984), where the Wisconsin Supreme Court stated that the court may initiate the view on its own motion in a jury case and may conduct a view in a civil nonjury case, after notice to the parties with opportunity for them to be present at the view. The lawyers, a reporter, and the parties C if their lawyers so request C should be present. In that nonjury case, the trial judge took a view on his own at the close of the evidence without notifying the parties of his intention to do so. The court found his action was error requiring a new trial.

The “view” is for the purpose of enabling the trier of fact to Abetter understand, correctly weigh, and assess the respective credibility of the evidence. American Family Mut. Ins. v. Shannon, supra, at 568. It is not considered as evidence independent of that produced during the trial.

As to the second paragraph, see Sasse v. State, 68 Wis. 530, 537, 32 N.W. 849 (1887).