

950 REASONABLE DILIGENCE IN DISCOVERY OF INJURY (STATUTE OF LIMITATIONS)

Question _____ asks whether (plaintiff) knew, or should (he) (she) with the exercise of reasonable diligence have known, on or before (date on which statute of limitations would have run) that _____ was a cause of (damage) (injury) to _____.

To answer this question "yes," you must be satisfied that, prior to (date), (plaintiff) knew or with the exercise of reasonable diligence should have known the following:

First, that (he) (she) (suffered damages) (was injured).

Second, that (his) (her) (damages) (injuries) were probably caused by (defendant)'s conduct.

"Reasonable diligence" means the diligence the great majority of persons would use in the same or similar circumstances to discover the cause of the (damages) (injuries).

COMMENT

This instruction and comment were approved in 2009. The comment was updated in 2016.

Gumz v. Northern States Power Company, 2007 WI 135, 305 Wis.2d 263, 742 N.W.2d 271; Schmidt v. Northern States Power Co., 2007 WI 136, 305 Wis.2d 538, 742 N.W.2d 294. Kolpin v. Pioneer Power & Light, 162 Wis.2d 1, 469 N.W.2d 595 (1991); Allen v. Wisconsin Public Service Corp., 2005 WI App 40, 279 Wis.2d 488, 694 N.W.2d 420; Spitler v. Dean, 148 Wis.2d 630, 436 N.W.2d 308 (1989); Christ v. Exxon Mobil Corp., 2015 WI 58, 362 Wis.2d 668, 866 N.W.2d 602.

A cause of action accrues for purposes of determining the statute of limitations when the plaintiff discovers, or with reasonable diligence should have discovered, the injury and that the defendant's conduct probably caused that injury. Borello v. United States Oil Co., 130 Wis.2d 397, 411 (1986); Schmidt v. Northern States Power Company, 2007 WI 136. Discovery occurs when the plaintiff has information that would constitute the basis for an objective belief as to his or her injury and its cause. Claypool v. Levin, 209 Wis. 2d 284 (1997); Schmidt v. Northern States Power, *supra*.

In Gumz v. Northern States Power Company, *supra*, the supreme court noted that "(S)tatute of limitations defenses based on failure to exercise reasonable diligence will often present questions of fact appropriate for a jury. When they do, courts should provide separate questions for negligence and reasonable diligence in discovery." (para. 49).

The last paragraph is taken from Allen v. Wisconsin Public Service Corp., 2005 WI App 40, 279 Wis.2d 488, 694 N.W.2d 420.