

**1030 RIGHT TO ASSUME DUE CARE BY HIGHWAY USERS**

Every user of a highway has the right to assume that every other user of the highway will obey the rules of the road. However, a person cannot continue to make this assumption if the person becomes aware, or in the exercise of ordinary care ought to be aware, that another user of the highway, by his or her conduct, is creating a dangerous situation. Under such circumstances, a person using the highway must use ordinary care to avoid the danger.

**COMMENT**

This instruction was approved in 1974 and revised in 1985. The comment was reviewed without change in 1989. Editorial changes were made in 1992 to address gender references in the instruction. No substantive changes were made to the instruction.

The instruction is taken from Kellogg v. Chicago & N.W. Ry., 26 Wis. 223, 233-34, 237-38 (1870); Langhoff v. Milwaukee & Pr. du Ch. R. Co., 19 Wis. 489 (1865). See also Dekeyser v. Milwaukee Automobile Ins. Co., 236 Wis. 419, 295 N.W. 755 (1941).

This instruction cannot be given unless the plaintiff made an assumption that the defendant would exercise due care. Geis v. Hirth, 32 Wis.2d 580, 592, 146 N.W.2d 459 (1966).

If a driver approaching a green light is exercising due care, he or she is entitled to rely upon the favorable signal light, until it becomes apparent to the driver that the driver approaching the red light is going to proceed in disregard of the light and the rules of the road. See Sabinasz v. Milwaukee & Suburban Transp. Corp., 71 Wis.2d 218, 238 N.W.2d 99 (1976). Teas v. Eisenlord, 215 Wis. 455, 461, 253 N.W. 795 (1934); Zindell v. Central Mut. Ins. Co., 222 Wis. 575, 580, 269 N.W. 327 (1936); Wilson v. Koch, 241 Wis. 594, 6 N.W.2d 659 (1942); and Wis JI-Civil 1191, Duty of Driver Entering Intersection with Green Light in His Favor: Lookout. See also Wis JI-Civil 1090, Driver on Arterial Approaching Intersection: Lookout; Right of Way; Flashing Yellow Signal.