1035 VOLUNTARY INTOXICATION: RELATION TO NEGLIGENCE

In answering the question(s) of the verdict relating to the negligence of any party, you are not to consider a person's drinking of intoxicants before the accident unless you determine that the intoxicants consumed affected the person to the extent that the person's ability to exercise ordinary care (in the operation of the vehicle) (and) (or) (for the person's own safety) was affected or impaired to an appreciable degree. A person who voluntarily consumes intoxicants must use the same degree of care in the operation of a vehicle or for his or her self-protection as one who has not consumed intoxicants.

COMMENT

This instruction and comment were approved in 1972 and revised in 1989 and 2003.

If blood texts are in evidence, see JI-Civil 1008.

This instruction should be given only when there is evidence permitting a reasonable inference that the drinking done by the driver or guest affected him or her to the extent stated.

In Landrey v. United Serv. Auto Ass'n, 49 Wis.2d 150, 158, 181 N.W.2d 407 (1970), the court stated the general rule on the relation between intoxication and negligence by quoting from 38 Am. Jur. Negligence § 36 as follows:

> Voluntary intoxication is not negligence per se. The law of negligence, however, does not put a premium upon voluntary drunkenness. From the standpoint of civil liability, the conduct of an intoxicated man is judged by the same standard as that applied to the conduct of a sober man. Ordinary care is not measured by what every prudent drunken man would do under like circumstances, but by what every prudent sober man would do under like circumstances.

Cases Relating to Driver: The Wisconsin Supreme Court has said that "it is negligence per se to operate a motor vehicle while under the influence of intoxicants." State v. Caibaiosai, 122 Wis.2d 587, 363 N.W.2d 574 (1985). See also State v. Wolske, 143 Wis.2d 175, 182, 420 N.W.2d 60, 62 (Ct. App. 1988). Where it is not disputed that the intoxication caused the accident, then the trial judge can instruct that if the jury finds that the defendant's intoxicated state was a cause of the accident, it was negligence per se.

Vonch v. American Standard Ins. Co., 151 Wis.2d 138, 442 N.W.2d 598 (Ct. App. 1989) (petition to review denied).

See also Landrey v. United Serv. Auto Ass'n, supra; Steffes v. Farmers Mut. Auto Ins. Co., 7 Wis.2d 321, 330, 96 N.W.2d 501, 507 (1959); Haag v. General Acc. Fire & Life Assur. Corp., 6 Wis.2d 432, 433-34, 95 N.W.2d 245, 247 (1959); Frey v. Dick, 273 Wis. 1, 9, 76 N.W.2d 716, 720 (1956).

Cases Relating to Guest: Watland v. Farmers Mut. Auto Ins. Co., 261 Wis. 477, 479-80, 53 N.W.2d 193, 194-95 (1952); Schubring v. Weggen, 234 Wis. 517, 521-22, 291 N.W. 788, 790 (1940).