

**1047 CONTRIBUTORY NEGLIGENCE OF GUEST: RIDING WITH HOST**

A passenger in an automobile has no duty with reference to the manner in which the vehicle is momentarily managed. A passenger may assume that the driver understands and appreciates the control he or she has over the car and that the driver will not operate it in a negligent manner.

However, if the driver during operation of the vehicle subjects the passenger to an unreasonable risk of injury and the passenger knows, or, in the exercise of ordinary care, ought to know, that the passenger is being exposed to such danger, it then becomes the passenger's duty to use ordinary care for his or her own protection by (taking such action open to him or her) (making such protest) as a person of ordinary intelligence and prudence would (take) or (make) under the same or similar circumstances.

**COMMENT**

This instruction and comment were approved in 1972. The comment was updated in 1986 and 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.

This instruction can be used in two situations: (1) where the occupant did nothing, and it was claimed that some action was necessary; (2) where it is claimed that the occupant's action was inadequate.

Delmore v. American Family Mut. Ins. Co., 118 Wis.2d 510, 348 N.W.2d 151 (1984). McConville v. State Farm Mut. Auto Ins. Co., 15 Wis.2d 374, 113 N.W.2d 14 (1962); Theisen v. Milwaukee Auto Mut. Ins. Co., 18 Wis.2d 91, 118 N.W.2d 140 (1962). See also, Comment, Wis JI-Civil 1046

Acquiescence to the other driver's behavior does not make the passenger a participant in an automobile race on a public highway. Mikaelian v. Woyak, 121 Wis.2d 581, 360 N.W.2d 706 (Ct. App. 1984).