

1055 LOOKOUT

A driver must use ordinary care to keep a careful lookout ahead and about him or her for the presence or movement of other vehicles, objects, or pedestrians that may be within or approaching the driver's course of travel. In addition, the driver has the duty [to use ordinary care] to lookout for the condition of the highway ahead and for traffic signs, markers, obstructions to vision, and other things that might warn of possible danger. The failure to use ordinary care to keep a careful lookout is negligence.

To satisfy this duty of lookout, the driver must use ordinary care to make observations from a point where the driver's observations would be effective to avoid the accident. Additionally, having made the observation, the driver must then exercise reasonable judgment in calculating the position or movement of persons, vehicles, or other objects.

[When approaching an intersection where a marked or unmarked crosswalk for pedestrians exists, the driver must maintain such a lookout as is reasonably necessary to avoid striking them (and to yield the right of way to pedestrians when they have the statutory right of way).]

[When hazards exist because of highway conditions, volume of traffic, obstructions to view, weather, visibility, or other conditions, care must be exercised consistent with the hazards.]

COMMENT

This instruction was initially approved in 1962. The instruction and comment were revised by the Committee in 1982, 1984, and 1997. The comment was updated in 1989. Editorial changes were made in 1992 to address gender references in the instruction.

Brown v. Travelers Indem. Co., 251 Wis. 188, 192, 28 N.W.2d 306 (1947); Hafemann v. Milwaukee Auto Ins. Co., 253 Wis. 540, 546, 34 N.W.2d 809, 812 (1948); Thieme v. Weyker, 205 Wis. 578, 580, 238 N.W. 389 (1931); Cunnien v. Superior Iron Works Co., 175 Wis. 172, 176, 184 N.W. 767 (1921). See also

Westfall v. Kottke, 110 Wis.2d 86, 328 N.W.2d 481 (1983). Where the alleged negligent lookout involves lookout to the rear, see Wis JI-Civil 1114 and 1355.

The duty of lookout has two aspects: namely, a duty of observation and a corollary duty to exercise reasonable judgment in calculating the position and movement of other persons, vehicles, and other objects. This dual aspect of the duty of lookout has been collectively referred to as "the requirement of efficient lookout." Gleason v. Gillihan, 32 Wis.2d 50, 55, 145 N.W.2d 90 (1966).

The requirement of efficient lookout was applied in Plog v. Zolper, 1 Wis.2d 517, 527, 85 N.W.2d 492 (1957), wherein the court stated:

Failure to properly evaluate what is seen is as much an element of lookout as not seeing the approaching vehicle at all.

Although the law does give the driver on a through highway a preference, the driver still has a duty of lookout. In Leckwee v. Gibson, 90 Wis.2d 275, 287, 280 N.W.2d 186 (1979), the court said:

The operator of an automobile having the right of way on an arterial highway must still maintain a proper lookout. Having the right of way does not relieve one of the duty of watching the road for vehicles on the highway or entering thereon. (Citing Puhl v. Milwaukee Auto Ins. Co., 8 Wis.2d 343, 348, 99 N.W.2d 163 (1959).)

See also Liles v. Employers Mut. Ins. of Wausau, 126 Wis.2d 492, 377 N.W.2d 214 (Ct. App. 1985).

The failure of a driver who does not see or become aware of danger in time to take effective steps to avoid an accident is negligent as to lookout, not management and control. Leckwee v. Gibson, *supra* at 291 n.7.

The claim of an existing emergency to negative acts of alleged negligence does not apply when the negligent conduct complained of is negligent lookout. Schmiedeck v. Gerard, 42 Wis.2d 135, 140, 166 N.W.2d 136 (1969).

The duty of lookout extends beyond the confines of the roadway being traveled. See Reshan v. Harvey, 63 Wis.2d 524, 530, 217 N.W.2d 302 (1974).

Wis. Stat. § 346.88 prohibits the obstruction of the driver's view by activities within the car or by covering of the glass.

The last two paragraphs can be added when facts presented at trial warrant their addition.