

1336 RAILROAD CROSSING: DRIVER'S DUTY

A driver upon a highway, who is approaching a railroad grade crossing, has a duty to use ordinary care for his or her own safety. To perform this duty, a driver must not only look in both directions to determine whether a train is approaching but must listen as well. If by reason of any obstruction to his or her view as the driver approaches the tracks the driver is unable to make an efficient observation, the driver must slow down or stop the vehicle, if necessary, before entering upon the crossing to use his or her senses of hearing and vision effectively.

(If a driver claims to have looked and yet failed to see an approaching train which you determine must have been in plain sight or hearing, then the driver must either be deemed to have failed to look or to have looked and yet heedlessly submitted himself or herself to the danger.)

[Note: Add Wis JI-Civil 1338, Nonoperation of Railroad Crossing Signals, if appropriate.]

COMMENT

The instruction and comment were originally published in their present form in 1967. The instruction was revised in 1992 and 2008. Editorial changes were made in 1992 to address gender references in the instruction.

The first paragraph is supported by Bembister v. Aero Auto Parts, 12 Wis.2d 252, 107 N.W.2d 134 (1961); Keegan v. Chicago, M., St. P. & P. R.R., 251 Wis. 7, 27 N.W.2d 739 (1947); Bellrichard v. Chicago & N. W. Ry., 247 Wis. 569, 20 N.W.2d 710 (1945).

The second paragraph is supported by Odgers v. Minneapolis, St. P. & S. S. M. Ry., 261 Wis. 363, 52 N.W.2d 917 (1952), which quotes White v. Minneapolis, St. P. & S. S. M. Ry., 147 Wis. 141, 133 N.W. 148 (1911).

Wis JI-Civil 1070, Lookout: Failure To See Object In Plain Sight, may be substituted for paragraph two.

The duty to look and listen before entering upon a railroad track is absolute. Bellrichard v. Chicago & N. W. Ry., supra, and a complete failure to look or listen or to see what had to be in sight would probably be negligence as a matter of law. Keegan v. Chicago, M., St. P. & P. R.R., supra.

However, the presence of safety measures or devices at the crossing may make the conduct of the plaintiff (as an exercise of ordinary care under the circumstances) a jury issue. See Wis JI-Civil 1338, Nonoperation Of Railroad Crossing Signals, and Comment.