

1409 RAILROADS: NEGLIGENT SPEED, CAUSATION

If by your answer to question ____ you have determined that the train crew was negligent with respect to speed of the train, then to find the negligent speed a cause of the collision (accident), you must find that the negligent speed, under the circumstances, (misled the driver of the car as to the swiftness of the train's approach to the crossing) (prevented the operator of the train, after seeing danger, from slowing down, stopping, or otherwise controlling the train to avoid a collision (accident)).

COMMENT

The instruction and comment were originally published in 1967 and revised in 1980 and 2005.

Wis JI-Civil 1408 defines "negligence as to speed" where there is no limitation of speed by order of the Office of the Commissioner of Railroads. A negligent speed is not causal merely because it brings the train to the grade crossing at the instant it did, while if the train had been traveling more slowly the user of the highway might safely have crossed ahead of the train. Dombeck v. Chicago, M. St. P. & P. R.R., 24 Wis.2d 420, 129 N.W.2d 185 (1964).

To be causal the negligent speed must either: (1) mislead the motorist or user of the highway, Reinke v. Chicago, M. St. P. & P. Ry., 252 Wis. 1, 30 N.W.2d 201 (1947); Bellrichard v. Chicago & N.W. Ry., 247 Wis. 569, 20 N.W.2d 710 (1945); Webster v. Roth, 246 Wis. 535, 18 N.W.2d 1 (1945); or (2) interfere with the management and control of the train by the crew to the extent that the crew cannot effectively avoid a collision even though they exercise reasonable care with respect to management and control upon sighting danger. Dombeck, *supra*.