

1413 RAILROADS: ULTRAHAZARDOUS OR UNUSUALLY DANGEROUS CROSSINGS: INCREASED DUTY

It is claimed that the crossing in question is unusually dangerous. In determining whether the crossing in question is ultrahazardous or unusually dangerous, you may consider the amount of traffic on the highway, obstruction to view, usual speed of trains, visibility of approaching trains to the travelers on the highway, and any other conditions which make a crossing unusually dangerous.

If you are satisfied that the crossing in question is unusually dangerous, the defendant, in the exercise of ordinary care, is required to take additional precautions, commensurate with the hazards existing, for the protection of persons using the crossing, by installing better safety devices and by taking other measures for their protection as are adequate under the circumstances and conditions existing at the crossing.

COMMENT

This instruction and comment were approved in 1977 and updated in 2005.

The question is phrased in terms of negligence and if used would follow the general instruction on negligence of railroads at crossings.

The court must first determine whether to submit the instruction – i.e., whether issues created by the evidence warrant its use.

Kurz v. Chicago, M. St. P. & P. R.R., 53 Wis.2d 12, 21, 23, 192 N.W.2d 97 (1971), states:

A railroad at common law has the duty of ordinary care to install and maintain warning devices at a grade crossing This duty is not necessarily limited by statutory requirements such as sec. 192.29(5) Stats., relating to railroad signs.

An "ultrahazardous crossing" is a relative term and simply means the hazards of the railroad crossing demand more or better safety devices than it has or that the maximum speed at which a train may cross such crossing should be lower and commensurate with the hazards.

. . . [T]he general jurisdiction granted to the public service commission to require safety devices or to regulate railroad speed is not enough to immunize the railroad from the doctrine of common-law negligence. The public service commission must exercise its jurisdiction and make an order based upon the safety requirements of the crossing; the approval of plans for signals proposed by the railroad, without more is not enough. Consequently, the instruction in this case was proper if the evidence concerning the hazards justified it.