

1506 CAUSE: RELATION OF A MEDICAL PROCEDURE TO THE ACCIDENT

Question _____ asks whether the injury sustained in the accident on (date) was a cause of the (medical procedure). The question asks whether the injury was "a cause" rather than "the cause" of the (medical procedure). There may be more than one cause of a (medical procedure). To find that the injury sustained in the accident was a cause of the (medical procedure), you must be satisfied that the injury was a substantial factor in producing the medical condition which made the (medical procedure) a medical necessity.

COMMENT

This instruction and comment were originally approved in 1967. The instruction was revised in 1998.

This instruction is a modification of the instruction approved in Chapnitsky v. McClone, 20 Wis.2d 453, 122 N.W.2d 400 (1963), and, inferentially, again approved in Ide v. Wamser, 22 Wis.2d 325, 126 N.W.2d 59 (1964). In the typical negligence cases, this instruction, and the question at which it is directed, will not be used, for in such cases, causation C the relationship between physical and mental injuries and the accident C is taken care of in the damage question or questions and their applicable instructions, e.g.:

. . . to fairly and justly compensate the person named in the question for the personal injuries or damages resulting to him as a natural consequence of the collision. Wis JI-Civil 1705, Burden of Proof in Tort Actions.

See also Wis JI-Civil 1715 and Wis JI-Civil 1720.

Although the court in Chapnitsky, and later in Johnson v. Ray, 99 Wis.2d 777, 299 N.W.2d 849 (1981), notes that an instruction and special fact causation question as to whether particular injuries of the plaintiff were caused by the accident were not recommended in the typical personal injury litigation, it does recognize their propriety and advisability where:

- (1) Plaintiff's damages resulting from an accident would be minimal unless a particularly serious mental or physical condition was also caused by the accident, and
- (2) There is sharp conflict in the testimony as to whether such serious condition was caused by the accident. Chapnitsky v. McClone, supra at 463-64; Johnson v. Ray, supra at 787.

See also John A. Decker & John R. Decker, "Special Verdict Formulation," 60 Marq. L. Rev. 201, 264 (1977).

The instruction is not to be used in cases where either of two events, standing alone, would have been adequate to cause the injurious result. Chapnitsky v. McClone, supra at 464-66.