

1590 COMPARATIVE NEGLIGENCE: PLAINTIFF-GUEST PASSIVELY NEGLIGENT; HOST (OR OTHER DRIVER) NEGLIGENT

You are to answer this question only if you have found the plaintiff causally negligent with respect to (his) (her) injuries and also found the defendant(s) causally negligent in the operation of (his) (her) (their) automobile. If by your previous answers you are required to answer this question, you will answer the subdivisions thereof, assigning to each party such percentage, or part of 100%, which you find is attributable to that party. You will determine how much and to what extent each party is to blame for the injuries to (plaintiff) and whether the conduct of one made a larger, equal, or smaller contribution than the other. You will fix the percentage attributable to each party in proportion to the fault each party contributed to cause the injuries to (plaintiff).

The burden of proof on these subdivisions is on the one who asserts the percentage of causal negligence attributable to the other, and that party must satisfy you by the greater weight of the credible evidence, to a reasonable certainty, what your answer should be.

COMMENT

This instruction and comment were approved by the Committee in 1979. This instruction was revised in 2002 to conform the language regarding the burden of proof to the Committee's 2002 revisions to Wis. JI-Civil 200 and 205, the instructions on the civil burdens of proof. See Wis. JI-Civil 200, Comment.

This instruction is used in the situation where the guest's negligence did not cause the accident but did cause the guest's injuries.

Lovesee v. Allied Dev. Corp., 45 Wis.2d 340, 344-45, 173 N.W.2d 196 (1969); see also Taylor v. Western Casualty & Sur. Co., 270 Wis. 408, 71 N.W.2d 363 (1955); Grana v. Summerford, 12 Wis.2d 517, 107 N.W.2d 589 (1961).

Only causal negligence may be compared with causal negligence, Walker v. Kroger Grocery & Baking Co., 214 Wis. 519, 532-33, 252 N.W. 721 (1934); instruction cited as to cause statement, Olson v. Siordia, 25 Wis.2d 274, 279, 130 N.W.2d 827 (1964).

On burden of proof, see McGuiggan v. Hiller Bros., 214 Wis. 388, 393, 253 N.W. 403 (1934); Gauthier v. Carbonneau, 226 Wis. 527, 537, 277 N.W. 135 (1938); Biersach v. Wolf River Paper & Fiber Co., 247 Wis. 536, 549, 20 N.W.2d 658 (1945); Vogel v. Vetting, 165 Wis. 19, 28, 60 N.W.2d 399 (1953).