

**1591 COMPARATIVE NEGLIGENCE: GUEST PASSIVELY NEGLIGENCE;
CLAIMS AGAINST AND AMONG DRIVERS; APPORTIONMENT FROM
ONE COMPARATIVE NEGLIGENCE QUESTION**

You are to answer this question if you have found more than one party causally negligent. 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 in causing the injuries sustained by (plaintiff) and the extent to which 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 that each party contributed to cause (plaintiff)'s injuries.

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. The comment was revised in 2015 to replace the term, "guilty of active negligence."

This question is submitted under Theisen v. Milwaukee Auto Ins. Co., 18 Wis.2d 91, 118 N.W.2d 140 (1962), and Justice Fairchild's article in 46 Marquette Law Review 1 (1965). Justice Fairchild would use the total active negligence of all parties as the basis on which each party would, or would not, recover; e.g., if such active negligence of the parties totals 90% and the guest's passive negligence contributing to his or her injuries 10%, the guest would recover 90% of his or her damages. To determine the recovery or not of the negligent parties, their percentages of negligence; say A, 15%; B, 20%; and C, 55% (totaling 90%) would be converted to a new base of 100%: A, 15/90s; B, 20/90s; and C, 55/90s. If we assume that each party had damages of \$1,000, reduced recoveries would be as follows: Guest would recover \$900; \$150 from A, \$200 from B, and \$550 from C; A would recover \$834; \$222 from B and \$612 from C; B would recover \$778 from C; C would recover nothing.