

3115 FAILURE OF INSURED TO COOPERATE

Question ____ inquires whether the insured, ____, failed to cooperate with his or her insurer, ____, in its defense.

Cooperation does not mean that ____, the insured, is to combine with ____, the insurer, to present a sham defense. Cooperation does mean that there shall be a fair, frank and truthful disclosure of information reasonably demanded by the insurer for the purpose of enabling it to determine whether or not there is a genuine defense.

An insurer must have from the insured a complete and truthful statement of the facts in order to prepare an adequate defense in cases of contested liability or to prepare a just settlement. This statement must be made in a spirit of cooperation and helpfulness by the insured, who is in many cases the only source of information available to the insurer. Any untruthful statement or testimony must be made consciously, that is, it must be deliberate and willful falsification.

The burden of proof with respect to your answer to this question is upon the insurer, ____, who contends that you should answer this question "yes."

COMMENT

This instruction was approved by the Committee in 1967. The comment was updated in 1980 and revised in 2016. An editorial correction was made in 1996.

As to the first paragraph, see Buckner v. General Cas. Co., 207 Wis. 303, 309, 241 N.W. 342 (1932); Dietz v. Hardware Dealers Mut. Fire Ins. Co., 88 Wis.2d 496, 276 N.W.2d 808 (1979); McDonnell v. Hestnes, 47 Wis.2d 553, 177 N.W.2d 845 (1970).

As to the second paragraph, see Kurz v. Collins, 6 Wis.2d 538, 546, 95 N.W.2d 365 (1958); Buckner v. General Cas. Co., *supra* at 309.

Over-cooperation is not a failure to cooperate, Buchberger v. Mosser, 236 Wis. 70, 75, 294 N.W. 492 (1940).

Willful refusal to verify an answer is noncooperation, Jenkinson v. New York Cas. Co., 241 Wis. 328, 332, 6 N.W.2d 192 (1942).

The question of noncooperation should be tried after the trial on the negligence liability issue. Kurz v. Collins, supra at 549-550.

With respect to the defense of noncooperation by a motor vehicle liability insurer, Wis. Stat. § 632.34 (1979) states that such defense is not effective against a third person making a claim, unless there was collusion between the third person and the insured or unless the claimant was a passenger in the insured vehicle.