

**3207 IMPLIED WARRANTY: USE OF PRODUCT AFTER THE DEFECT KNOWN**

When a buyer of a product knows or in the exercise of ordinary care should have known that the product was defective and in spite of this knowledge uses the product and as a result of using it sustains injury or damage, then there is no breach of warranty.

**COMMENT**

The instruction and comment were originally published in 1971. The instruction was updated in 2009. The comment was updated in 1980.

Northern Supply Co. v. Vanguard, 117 Wis. 624, 94 N.W. 785 (1903); 33 A.L.R.2d 514 (1954). See also Valiga v. National Food Co., 58 Wis.2d 232, 257-59, 206 N.W.2d 377 (1973); Concrete Equip. Co. v. Smith Contract Co., Inc., 358 F. Supp. 1137 (W.D. Wis. 1973).