

3268 STRICT LIABILITY: CONTRIBUTORY NEGLIGENCE

Negligence is the failure to exercise ordinary care.

The user of a product has the duty to exercise ordinary care for his or her own safety and protection. If you find that (plaintiff) (misused the product) (used the product knowing it to be defective or unreasonably dangerous) (used the product after altering or modifying the product) (used the product knowing the product was worn out in such a manner as to render the product unsafe) (failed to follow the instructions and warnings as to the use of the product), then you should find (plaintiff) negligent. If you are not so satisfied, you should find (plaintiff) not negligent.

COMMENT

This instruction and comment were originally published in 1971 and revised in 2011, 2013, and 2015.

Wis. Stat. § 895.047(3)(c)(2012) provides that: "damages for which a manufacturer, seller or distributor would otherwise be liable shall be reduced by the percentage of causal responsibility for the claimant's harm attributable to the claimant's misuse, alteration, or modification of the product."

Dippel v. Sciano, 37 Wis.2d 443, 155 N.W.2d 55 (1967); 13 A.L.R.3d 1057, 1100-1103 (1967); Restatement, Second, Torts (2d) § 402A, Comment n (1965).

For related instructions, see Wis JI-Civil 1007, 3207, 3208, 3210, and 3254.