4.14 Unavoidable Accident/Collision/Incident

The Committee recommends that no "unavoidable accident/collision/incident" instruction be given.

Heading, Non-recommended instruction, and Comment revised February 2023.

Comment

As of July 1, 2023, the Illinois Legislature amended certain statutes replacing "accident" with "crash" to clarify that not all crashes are accidental. Crash encompasses all types of motor vehicle impacts and collisions, including, but not limited to, an impact or collision caused by negligence, willful and wanton conduct, or an intentional act. P.A. 102-0982. The IPI Committee recommends use of the term "collision" or "incident" in lieu of the term "crash."

In Illinois when there is *any* evidence tending to prove that the plaintiff's injury was caused by negligence, it is reversible error to instruct on "unavoidable accident." *Wolpert v. Heidbreder*, 21 Ill.App.2d 486, 158 N.E.2d 421 (3d Dist.1959); Annotation, *Instructions on Unavoidable Accident, Orthe Like, In Motor Vehicle Cases*, 65 A.L.R.2d 12 (1959); Cook v. Hoppin, 783 F.2d 684, 693 (7th Cir.1986).

The legal definition of "accident" was stated in *Cornwell v. Bloomington Business Men's Ass'n*, 163 Ill.App. 461 (3d Dist.1911), which held that it was improper to give this instruction in an action to recover for burns sustained when the plaintiff, while attending a Fourth of July fireworks demonstration, was struck by a misfired skyrocket. The issues were whether the plaintiff assumed the risk by attending the exhibition, whether he was contributorily negligent in crossing a rope to keep spectators away from the firing area, and whether the defendant was negligent in securing the rocket to the firing rack. The court defined "accident," as follows:

> "An accident, as defined by legal authorities, for which no liability exists is one which is the result of an unknown cause or is the result of an unusual and unexpected event happening in such an unusual manner from a known cause that it could not be reasonably expected or foreseen and that it was not the result of any negligence."

163 Ill.App. at 467.

Laymen do not have an understanding of this technical meaning of "accident" but understand it tomean any occurrence producing injury not implying deliberate or intentional fault. Used in this sense, a jury can only be misled when informed that a defendant is not responsible for the consequences of an "accident." This is true even though "accident" is ostensibly qualified by the term "unavoidable."

In view of the very limited area of factual situations in which this instruction is proper, and the possibilities of prejudice arising from the giving of this instruction where it is not proper, the criticism contained in *Williams v. Matlin*, 328 Ill.App. 645, 649, 66 N.E.2d 719, 721 (1st Dist.1946), is pertinent. There, the court said:

> "We agree with the statement of the Third Division of this Court in *Rzeszewski v. Barth*, 324 Ill.App. 345, 356; 58 N.E.2d 269, that the giving of this instruction should be discouraged. It is only when there is evidence tending to show that the plaintiff was injured

> through accident alone not coupled with negligence that the giving of such instruction is permissible. *Streeter v. Humrichouse*, 357 Ill. 234, 244; 191 N.E. 684. When proper, it merely tells the jury what should be known to the man on the street. Moreover, in practically every case, as here, the jury is instructed that it should find the defendant not guilty unless the plaintiff proves by the preponderance of the evidence, among other things, that the defendant was guilty of negligence proximately and directly causing the injuries complained of."

For these reasons, the Committee recommends that no instruction be given on this subject and that the matter be left to the argument of counsel.