

# Contributory Negligence on the NC Construction Project

By [Melissa Dewey Brumback](#)

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I'm sometimes asked if the percentage of "fault" is something that a client can rely on to reduce the amount of money they may owe on construction project gone bad. The short answer: no. As I mentioned in my post on [joint & several liability](#), if you are even 1% liable for the damages on a project, you can be hit with 100% of the damages.

This is not true in many other jurisdictions, where proportional fault (called comparative negligence) is often allowed. In those states, if you are found 20% liable, you only have to pay 20% of the damages. Not so in North Carolina. Here, unless you are entirely passively negligent, you may be on the hook for the full amount.



## ***That's not fair!***

Perhaps. But, that's life on a North Carolina construction project. One concept that helps to reduce the unfairness factor is the concept of ***contributory negligence***. In North Carolina (but few other states), if a party is negligent at all (even 1%), they cannot recover from another negligent party.

For example: the owner of a project sues its general contractor on a project for a late project delivery which costs the owner money. While almost all of the delay was the contractor's fault, the owner also caused delay by failing to deliver owner-furnished equipment in time to meet the critical path of the project. The owner's own failure means that the owner itself is contributorily negligent and, under North Carolina law, the owner cannot recover the rest of its damages from the contractor.

## ***But wait! There's more.***

Before you get too excited about contributory negligence, you need to understand the concept of ***jury nullification***. When contributory negligence is explained to a jury, the jury may sometimes decide not to find fault where they might otherwise apportion fault, to avoid what they perceive as an unjust result.

In the above example, the jury might decide the owner's failure was not really contributing to the delay after all, and therefore award the owner damages. This is called jury nullification, and it can take the sting out of contributory negligence.

## ***Change to NC's Contributory Negligence law?***

The concept of contributory negligence (and its complete bar to any recovery) is one which many would like to change. There has been legislation in the NC General Assembly in recent years to abolish contributory negligence in favor of a comparative-fault negligence, as is common in most states. So far, [this has not happened](#). As they say, however, the jury is still out on whether such a change will occur.

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Melissa Dewey Brumback is a Raleigh, NC attorney who focuses on construction law. She blogs on construction law at [www.constructionlawNC.com](http://www.constructionlawNC.com). Her twitter handle is @MelissaBrumback.

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