

# Joint & Several Liability in NC Construction

By [Melissa Dewey Brumback](#)

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If a client has been sued, he wants to know how much is at risk if he loses at trial. This is especially true where more than one person or company have been sued. How is any damage award apportioned?

The answer is not one clients generally like to hear: your company can be on the hook for 100% of any damages. This is true even if your company is really only liable for a tiny fraction of what caused the damages in the first place. You can thank "joint and several liability" for that.

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For example, in a fairly typical construction dispute, an owner sues a contractor and the architect for construction defects. The contractor uses unsuitable substitutions, and the architect approves the unsuitable substitutes. Both contractor and architect may be held liable for the resulting damages. If a jury awards the owner \$500,000, then both contractor and architect are liable **for the entire \$500,000** to owner. That's the "severability" part of the law. As between the two, of course, they both share in the damages, and if the owner executes on the entire judgment against the architect (perhaps due to the architect's insurance coverage), the architect can then go after the contractor for an equal share and get paid back \$250,000 in "contribution." (That's the "joint" nature of such an award). This is, however, assuming the contractor has those funds. Essentially, whoever has the funds when a judgment hits might end up paying for the entire award. If the contractor doesn't have \$250,000 for the architect to be paid back, the architect is out of luck.

Does the result change if the jury finds the architect was only 5% liable for the damages and 95% were attributed to the contractor? Nope. In North Carolina,

where the parties' actions together contribute to one indivisible injury, there is no apportionment. "[In for a penny, in for a pound](#)" as the old saying goes.

### **Exceptions to the Rule?**

Are there exceptions? But of course! If the owner is also negligent, he can get no recovery at all since North Carolina is a pure contributory negligence state. If one party is actively negligent and one passive, than the passively negligent party can seek indemnity from the active party. If one party settles before trial, things become more complicated. More on these subjects in future posts. I'm also told that in other states apportionment is more the rule, so you may have better luck with your out of state projects in a similar situation.

As a general rule of thumb, however, for your North Carolina project, just assume that the entire amount of claimed damages may be presented to you for payment. Unfair? Many times, yes. That's the nature of the beast. It is also one of many, many good reasons to make sure you are doing business with people you trust and, more importantly, that other professionals are appropriately insured or bonded on any project you are working on.

If you have any questions about joint and several liability, [drop me a line](#).

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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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