

# Active vs. Passive Negligence on the Construction Project

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*"As long as I was in, and in for good, I might as well go the whole hog."--Huck Finn, [The Adventures of Huckleberry Finn](#) by Mark Twain*

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If you work on a North Carolina construction project, you, too, are in "the whole hog" if you are negligent. That is, if you are negligent at all, you are on the hook for the full lot. As we've discussed, joint tort-feasors (that is, two negligent parties who are [jointly & severally liable](#)) are generally not entitled to indemnity from one another.

However, there are exceptions, and today we're talking about one such exception-- the passively negligent party.

## ***What is passive negligence?***

Active negligence is an *action* which causes damage. In contrast, passive negligence is negligence due to inaction, omission, or the failure to do something that you are legally obligated to do. The actively negligent party is primary responsible for paying any damages, and the passively negligent party is only secondarily liable.

For example, if a subcontractor is actively negligent in constructing the framing for a building, and the general contractor failed to notice the defect, the subcontractor is actively negligent and the general contractor is passively negligent.

## ***Indemnity of the passively negligent party***

Where the active negligence of one tort-feasor and the passive negligence of another combine to proximately cause injury to a third party, the passively negligent tort-feasor who is compelled to pay damages to the injured party is entitled to indemnity from the actively negligent tort-feasor. This is called common-law indemnity, as opposed to [contractual indemnity](#), which we discussed in an earlier blog post.

In our example above, the subcontractor, as the actively negligent party, is the party ultimately responsible for the poor framing and the resulting damages. If the general contractor is sued by the owner, he can in turn sue the subcontractor for the damages which were caused by the sub.

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