



OFFICE LOCATION

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PRACTICE AREAS

Workers Compensation

Personal Injury

Motor Vehicle Accidents

Wrongful Death

Motor Vehicle Accident Knowledge Center

5/27/2010

*Dealing With Your Insurance Company FAQ

*Insurance Adjusters: First Discussions

*Car Accident Defenses: Contributory and Comparative Negligence:

Recovery may be limited when an accident victim negligently contributes to the cause of the accident.

Determining who is legally responsible (that is, "at fault") for a car accident can be a difficult process. The person bringing a lawsuit or making an insurance claim for damages (the plaintiff) must first prove that the other person (the defendant) was negligent. But even if the plaintiff can do this, the defendant can still avoid partial or full liability by establishing a defense to the accident.

The systems of comparative and contributory negligence in car accidents are designed to deal with situations in which both parties have contributed to the accident -- or, in legalese, where both parties have been "negligent." For example, say Dan is driving at night and hits Ann, a pedestrian, when Ann suddenly and unexpectedly darts into the intersection. In this scenario the question of who is at fault is not clear-cut, as both Dan and Ann may have contributed to the accident.

How liability is treated when both parties have contributed to the car accident depends, in large part, on where you live. A few states follow a contributory negligence system, but most follow a comparative negligence system. Here's a primer on these two defenses and how they work.

Comparative Negligence: A "Partial" Defense



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The comparative negligence system allocates fault between the parties. Under the comparative negligence system, adopted by most states, a defendant can raise a partial defense, saying that the plaintiff was partially at fault for the accident too.

Here's an example of how this works. Say that Dan is making a left turn and hits Ann who is driving over the speed limit through the intersection. Ann sustains injuries and sues Dan for negligence. Under a comparative negligence system, Dan may be found to be 80% at fault for hitting someone while making a left turn and Ann may be found to be 20% at fault because she was speeding. If the total available compensation is \$100,000, Ann will receive \$80,000 instead of the total amount -- her amount is reduced according to her degree of fault (20%).

Different states have different comparative negligence rules. Comparative negligence rules differ from state to state. Many have adopted some form of the two rules described below. Some states have their own unique rules.

*Pure comparative negligence. In "pure" comparative negligence regimes, accident victims can recover some compensation for their injuries even if they were quite negligent in their own driving or their degree of fault is higher than the defendant's degree of fault.

*Modified comparative negligence. In "modified" comparative negligence states, an accident victim's recovery is limited if the victim's fault exceeds a certain degree. For example, in some states an accident victim can only recover damages if his or her fault is less than that of the defendant -- that is, the accident victim must be less than 50% responsible for the accident in order to recover. This is called the "equal to or greater than" rule. Other state systems follow a "slight/gross" rule which requires the plaintiff's contributory negligence to be only slight in order for them to recover.

Contributory Negligence

If you are being sued in a car accident case and live in one of the few states that still use the contributory negligence system (Alabama, Maryland, North Carolina, Virginia, and Washington, D.C.), you may be able to avoid liability entirely if you can show that the accident victim's own negligence contributed to the car accident.



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The doctrine of contributory negligence essentially bars an accident victim from recovering any compensation if the defendant can prove that the plaintiff acted negligently and contributed to the accident in any way. The contributory negligence doctrine leads to harsh results because it denies compensation to accident victims even if their degree of fault is slight. As a result, only a few states still follow this regime.

Establishing the Accident Victim's Negligence

In order to successfully establish contributory or comparative negligence, a defendant must prove that the plaintiff, through the plaintiff's own negligence, contributed to the accident to some degree. But what does it mean to say that the accident victim was negligent?

Every person using the road -- pedestrian, motorist, and car passenger -- is required to use reasonable care to protect his or her own safety as well as the safety of others. If a car accident victim fails to protect his or her own safety and the safety of others, he or she is being negligent and will be considered partly at fault for his or her own injuries.

Examples of plaintiff conduct that might be considered "negligent" include:

- *speeding while driving another car involved in the accident
- *making sudden or unexpected movements as a pedestrian (depending on the circumstances)
- *riding with a driver that plaintiff knows is drunk, reckless, or sleepy
- *riding in a car that plaintiff knows is defective (for example, riding in a car that is without lights or has a flat tire), and
- *interfering with the driver's operation of the car.

Plaintiff's Negligence Must Contribute to the Accident

A defendant has to show that the plaintiff's negligence contributed to the accident. If the plaintiff's behavior made his or her injuries worse, but didn't actually cause the accident, the defendant is out of luck.

For example, if Dan raises the defense of contributory negligence against Ann, the pedestrian who unexpectedly darted into the road, he has to establish that her behavior -- darting into the road -- played a part in causing the accident



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and her injuries.

Getting Help

Dealing with defenses and the allocation of fault in car accident cases can be complicated and may require the assistance of an attorney. If you decide to consult a lawyer, go straight to Nolo's Lawyer Directory.

If you decide to represent yourself in a car accident case, get *How to Win Your Personal Injury Claim*, by attorney Joseph L. Matthews (Nolo).

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