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### Car Accident Defenses: Contributory and Comparative Negligence

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New Mexico is a [comparative negligence state](#). As a result, it is possible for someone involved in an [auto accident](#) to recover damages even if he or she is partially responsible for the accident.

This is in stark contrast to those states that follow contributory negligence rules. Contributory negligence doctrine precludes a driver from recovering anything for his or her injuries for even minor negligence. The contributory negligence model has very harsh and unfair results since minor negligence is present in almost every accident. Contributory negligence doctrine also encourages insurance companies to fight [liability](#) even where their driver is clearly responsible for the accident. There is a big payoff for a finding of contributory negligence since it excludes recovery where any contributory negligence is found.

Fortunately, New Mexico follows the much fairer comparative negligence model. Under comparative negligence, the injured party must still prove liability or fault on the part of the other driver. However, some minor negligence will not completely preclude recovery. Instead, the law will apportion fault to the parties. Any damages will be reduced by the percentage of fault attributable to the injured party.

For example, if the injured party proves \$10,000 damages and it is shown that he or she is 50% responsible for the accident, then the total recovery will be reduced by 50% to \$5000. This doesn't seem like much but in cases involving extraordinary damages, the recovery can be quite large even after the reduction for comparative fault. For instance, if the case involves permanent injuries or even death, the damages can be very large so that even with a 50% reduction in damages, the settlement or judgment can be substantial.

A [wrongful death action](#) can result in damages well in excess of a million dollars. Depending on the circumstances, the damages can rise to the millions. Under a contributory negligence model, the injured party or the estate would be prevented from recovering any damages at all if there was the presence of any contributory negligence. Under the comparative fault model, the injured party or the estate would recover reduced but still significant damages.

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