

Manager/Supervisor Risk Management

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A twice weekly e-mail training for YCPARMIA members

TOPIC: COMPARATIVE NEGLIGENCE

The comparative negligence defense has been mentioned in our discussions of auto liability and dangerous condition claims. For our purposes it is a partial defense that reduces the claimant's recovery to the degree that their own negligence contributed to their injury or damages. California was at one time a contributory negligence state; if your own negligence contributed to the accident, to any degree, you were barred from all recovery. In the mid-1970's the State converted to "pure comparative negligence."

Under a pure comparative negligence standard the claimant is allowed to recover damages minus the percentage that their own negligence contributed to the accident. For example:

- If there is an intersection accident with each party 50% at fault, each can recover 50% of their damages from the other party;
- If in the same accident one party is found to be 90% at fault they could only recover 10% of their damages;
- If a person trips and falls on a raised sidewalk panel, and is found to be 30% at fault, they can recover 70% of their damages.

There is no threshold in pure comparative negligence where damages are cut off. In some "non-pure" comparative negligence states (again not California) the claimant might be barred from any recovery if their own negligence exceeds 50% of the cause. Pure comparative negligence can result in what sometimes appear to be unfair results. For example, an intersection accident results in \$200K in damages and injuries for the party that is 90% at fault, and \$2K in damages for the party that is 10% at fault. The first party would recover \$20,000, while the second party would only get \$1,800.

Comparative negligence percentages are ultimately determined by going to court, but most cases settle long before that. The comparative negligence is therefore something that the parties usually negotiate. For this reason alone it is important that public entity employees never admit fault. A word on terminology: in claims we talk about "exposure" not liability. Liability and negligence are determined by the court; exposure is the recognition that we might be facing some share of the responsibility for an accident. Exposure is potential – our assets are potentially endangered, and the investigation and negotiations will determine to what extent.

Comparative negligence becomes a bit more complicated when you are looking to apportion responsibility for an innocent claimant's damages between multiple responsible parties. That will be the subject of the next topic.

Next topic: Deep Pockets – Joint and Several Liability