MARTIN & JONES PLLC
Attorneys at Law

Contributory negligence is a legal doctrine that has been repealed in most of the United States, but it can still be used in North Carolina to prevent accident victims from receiving a single penny in compensation, even in the most devastating accidents. This doctrine specifies that if an accident victim bears even the tiniest amount of blame for causing the injuries, then they are barred from recovery in a personal injury lawsuit.

Insurance companies and defense attorneys will use this doctrine to stop your claim, so work with a skilled attorney who knows how to counter their arguments. This article explains how contributory negligence works and how to protect your ability to recover.

How is the Contributory Negligence Rule Applied in North Carolina?

The contributory negligence rule is not spelled out in North Carolina statutes, but courts have applied it as it developed through case law over time. In broad terms, the doctrine holds that if an injured person did something negligent that contributed to their injury, they are barred from recovering damages for that injury.

The North Carolina Supreme Court has restated the principle in the following way:

"[o]ne who has the capacity to understand and avoid a known danger and fails to take advantage of that opportunity and injury results, he is chargeable with contributory negligence, which will bar recovery."

How is Fault Evaluated?

Often, accidents that result in injuries are caused by several factors working together. For instance, a rear-end collision may occur because the driver in front was not paying attention and had to stop suddenly, and the driver behind was driving too fast and too close and didn't have enough room to stop in time to avoid the collision. In that situation, the driver of the rear vehicle was primarily at fault for driving irresponsibly. However, the driver in the front car could also be negligent. If the court finds that to be the case, it may divide fault between the parties. The driver of the rear vehicle might be assigned 80 percent of the fault while the driver in front is assigned 20 percent of the blame.

How Does North Carolina Handle Shared Fault?

In North Carolina, if a person seeking compensation for injuries (the plaintiff) is found to have even 1 percent fault for causing those injuries, the contributory negligence rule prevents them from receiving anything. This can happen even if they suffered catastrophic injuries. (A knowledgeable attorney may be able to convince the court that an exception applies to prevent the rule from barring recovery.)

In most other U.S. states, the old contributory negligence rule has been replaced by a comparative fault rule. This rule allows a victim to recover some damages even if they were negligent, although their recovery is reduced by an amount equivalent to their share of fault. But in North Carolina, it's all or nothing.

How is Contributory Negligence Raised in North Carolina Injury Cases?

Under Section 1-139 of the North Carolina Statutes, the defendant must assert the contributory negligence rule and must prove that the plaintiff's negligence contributed to the injury. The defense can be used in all types of injury cases, including:

- Car accidents
- Truck accidents
- Product liability
- Bicycle accidents
- Medical malpractice
- Motorcycle accidents
- Boating accidents and shipboard injuries

To establish contributory negligence, the attorneys fighting the claim must prove that the injured person failed to exercise reasonable care, that their conduct was negligent, and that the negligent actions contributed to the injuries.

FAQs About the Contributory Negligence Rule in North Carolina

How does the contributory negligence rule destroy a case?

When insurance companies claim an accident victim was negligent, and the court accepts their argument, the contributory negligence rule ends the case unless the victim's attorney can prove an exception applies. The rule

prevents the court from awarding damages for medical bills, pain and suffering, lost wages, or any other consequences resulting from the injuries. The victim gets nothing.

Are there exceptions to the rule that allow recovery?

An experienced attorney may be able to show that an exception applies and allow the victim to recover even if their actions contributed to the injuries. For instance, the attorney may show that the defendant's action was intentionally wrongful or so reckless that, as a matter of public policy, the defendant should not be allowed to avoid responsibility for the outcome.

Or the attorney may show that after the victim's negligent action, the defendant still had a final, clear opportunity to avoid the accident but failed to act responsibly. This is known as the "last clear chance" doctrine. Because the defendant has a contributory negligence case, you need substantial evidence and persuasive reasoning to convince the court to allow recovery, so it is wise to start working with an attorney as soon as possible after the injury.

What should I do to avoid having my recovery barred by the contributory negligence rule?

A seasoned personal injury lawyer can provide advice specific to your situation, but in general, it is wise to say as little as possible about the injury to anyone, preserve all types of evidence indicating causation, and follow doctors' recommendations for caring for your injuries.

Martin & Jones Knows How to Overcome Contributory Negligence Arguments

While it is challenging to recover when defendants raise contributory negligence, the team at Martin & Jones knows how to build the strongest case to overcome the tactics of insurance companies and corporate legal teams. The earlier we begin acquiring and preserving evidence, the better our chances of building the strongest possible case for recovery.

So if you or a loved one was injured in an accident that was primarily someone else's fault, we invite you to schedule a free consultation and case evaluation with our team to learn what may be possible in your case.

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