

ILLINOIS LAW MANUAL

CHAPTER IX SPECIAL DEFENSES

D. LIMITATION ON RECOVERY

On November 25, 1986, the Illinois General Assembly adopted a "modified" form of comparative negligence, by which a comparatively negligent plaintiff's damages are diminished by the percentage of liability attributed to him, up to 50%, in causing his own injuries. However, if the plaintiff's own negligence amounts to more than 50% of the entire cause of the injury, the plaintiff is barred from all recovery. This defense must be affirmatively pled and is commonly referred to as the affirmative defense of contributory negligence.

Modified comparative negligence (735 ILCS 5/21116) only prohibits recovery by a plaintiff whose negligence is found to be more than 50% responsible for the injuries in question. If two or more defendants are found negligent in a total amount of more than 50%, but one of the defendants has less causative responsibility than the plaintiff, then the plaintiff will still recover the net amount of his damages. This is true even though the plaintiff was found to be more at fault than one of the defendants. There is no requirement in Illinois that a defendant's negligence must be greater than that of the plaintiff in order to recover.

In 1995, the Illinois General Assembly attempted to further modify comparative negligence. This attempt at tort reform was, however, held unconstitutional, and the amendment was struck down in its entirety in 1997. Best v. Taylor Machine Works, 179 Ill. 2d 367 (1997). To date, the legislature has not acted to further amend this section, and the courts have

continued to operate under the modified comparative negligence standard enacted in 1986.

In rare cases, a plaintiff will be found more than 50% at fault as a matter of law. When that occurs, a verdict will be directed in favor of the defendant. In Reuter v. Korb, 248 Ill.App.3d 142 (2nd Dist. 1993), the plaintiff pedestrian was injured when struck by a motorist while walking in the middle of the road. He was intoxicated and wearing dark clothing. The court properly granted a motion for directed verdict in favor of defendant, finding that the plaintiff's fault was greater than 50%.

The jury is always told that, in cases in which the accident took place on or after November 25, 1986, the defendant will not be found liable if the plaintiff is more than 50% at fault for his own injury:

In all actions on account of bodily injury or death or physical damage to property based on negligence, or product liability based on strict tort liability, the court shall instruct the jury in writing that the defendant shall be found not liable if the jury finds that the contributory fault of the plaintiff is more than 50% of the proximate cause of the injury or damage for which recovery is sought.

735 ILCS 5/2-1107.1.

The jury is therefore aware, before they begin to deliberate, that the plaintiff will recover nothing if they find that he was more than 50% at fault.