

Comparative Negligence & Wrongful Death

Contributory negligence has been defined by Kentucky courts as “The act or omission amounting to want of ordinary care on part of the complaining party, which concurring with the defendant’s negligence is the proximate cause of injury.” *Louisville Transit Co. v. Sexton*, 471 S.W. 2d 20, 22 (Ky. 1971) What? In other words you may be partly to blame for the accident.

Kentucky is what is called a comparative fault state. This means that there can be fault on the part of the deceased and the estate would still be able to bring a wrongful death claim. A percentage of fault or negligence would be assigned to each side.

Sometimes it is not easy to determine whose fault an accident is. There are gray areas. It is not black and white. Who had the green light? Had the yellow light turned red? There are times when an accident may be partly the fault of the deceased. In these situations the deceased is considered to be contributory negligent. In Kentucky the personal representative can still bring a cause of action and recover for the wrongful death. The recovery will be reduced by the percentage amount of the decedent’s negligence.

Let me give you an example. Suppose in the rear end collision caused by the inattentive driver that the deceased did not have his seatbelt on as required by law. This constitutes a negligent act in and of itself. If a jury decides that it contributed to the death they will place a percentage of faults on that act. If the jury places 25% fault on the deceased and award a judgment of \$1,000,000.00 the award would be reduced by 25%. In other words the estate would collect \$750,000.00.