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The following is a quick reference guide to accompany the October 16, 2018 podcast episode, Comparative v. Contributory Negligence. If you have additional questions, please contact us at podcast@rathbonegroup.com.

▪ **Contributory negligence**

- ❑ *Any liability on the part of the injured party is a bar to recovery*
- ❑ Used in 4 states and DC:
 - Alabama, Maryland, North Carolina, Virginia, and District of Columbia

▪ **Comparative negligence**

- ❑ *The Court apportions fault among the liable parties, even the Plaintiff*
- ❑ *Recovery is reduced by the amount of fault attributed to the injured party*

❑ **Pure comparative negligence**

- No bar to recovery regardless of percentage of fault
- Recovery is merely reduced
- 12 states follow pure comparative negligence system:
 - Alaska, Arizona, California, Florida, Kentucky, Louisiana, Mississippi, Missouri, New Mexico, New York, Rhode Island, and Washington

❑ **Modified comparative negligence**

- If the injured party's percentage of fault is too high, recovery will be barred
- 33 states follow modified comparative negligence:
 - **51% rule** – injured party can only recover if s/he is less than 51% liable
 - Connecticut, Delaware, Hawaii, Illinois, Indiana, Iowa, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Hampshire, New Jersey, Ohio, Oregon, Pennsylvania, South Carolina, Texas, Vermont, Wisconsin, and Wyoming

- A Note about Michigan:
 - If Plaintiff is 51% at fault, economic damages will be reduced, but noneconomic damages are barred altogether (Mich. Comp. Laws § 600.2959)
 - **50% rule** – injured party can only recover if his/her fault is less than 50%
 - Arkansas, Colorado, Georgia, Idaho, Kansas, Maine, Nebraska, North Dakota, Oklahoma, Tennessee, Utah, and West Virginia
- ☐ A Note about South Dakota: slight vs. gross negligence
 - No percentage, so an unspecified modified comparative negligence
 - Plaintiff can recover so long as plaintiff's negligence was "slight" compared to defendant's
 - And Plaintiff's recovery will then be reduced by the amount of his/her negligence
 - South Dakota Codified Laws 20-9-2.