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### Recklessness

Sometimes a person's conduct is so reckless that it becomes the basis for a lawsuit or criminal prosecution. In some instances, if a person acts with such utter disregard for the safety of others -- and knows (or should know) that his actions may cause harm to someone else -- he may be liable for injuries caused by his recklessness.

There are four basic theories of liabilities which, depending on the type of lawsuit, can render a defendant liable for injuries he or she causes.

1. **Intent** (also called willfulness) means the person acted with the intent to cause harm.
2. **Recklessness** means the person knew (or should have known) that his or her action were likely to cause harm.
3. **Negligence** means that the person acted in violation of a duty to someone else, with the breach of that duty causing harm to someone else.
4. **Strict liability** is reserved for certain specific situations where someone can be held liable for harms they cause no matter what their mental state was.

Recklessness involves conduct that is short of actual intent to cause harm, but greater than simple negligence. Unlike negligence -- which occurs when a person unknowingly takes a risk that they should have been aware of -- recklessness means to knowingly take a risk.

State laws prohibit many reckless behaviors and look upon reckless actors as social dangers because they gamble with other people's safety. A person who has been injured from a civil claim of recklessness of another may recover compensation for any resulting medical expenses, lost wages, rehabilitation, pain, and suffering. In addition, recklessness may also allow recovery from certain people who are typically immune from liability for mere negligence, such as government workers and health care professionals.

### **What Constitutes Recklessness?**

Recklessness is a state of mind that is determined both subjectively and objectively. There are two types of reckless behavior. The first looks at what the actor knew or is believed to have been thinking when the act occurred (subjective test). The second considers what a reasonable person would have thought in the defendant's position (objective test). In both situations, the issue turns on conscious awareness, or whether the person knew (or should have known) his actions may cause harm to another.

For example, it is reckless for a driver of a car to intentionally cross through a highway in defiance of a stop sign if a stream of traffic is seen to be closely approaching in both directions. Contrast that with his failure to stop because his attention is diverted and he does not know that he is approaching the crossing (which would be negligent).

Other examples of behaviors considered risky or reckless include:

- Drinking and driving at any time
- Drag racing in a residential neighborhood
- Substance use at a nightclub or other public area
- Carrying a concealed weapon
- Storing a gun in an un-locked box in a home where children are frequently present
- Engaging in unprotected sex when you have a known venereal disease, including AIDS/HIV

## **Elements of Recklessness**

Generally, an actor's conduct is reckless if:

- The actor intends to commit the act in question knowing it may create a risk of harm
- The risk itself is an unreasonable one
- The risk is substantially greater than negligent conduct
- The actor knows, or has reason to believe, others are present and in harm's way

Recklessness differs from negligence - which consists mainly of carelessness or incompetence - in that recklessness requires the conscious choice to take a particular course of action. Also, recklessness requires a further degree of risk on the part of the actor than does negligence.

It's important to note that reckless misconduct differs from intentional wrongdoing on one point. Under recklessness, the actor intends to commit the act but does not actually intend to cause harm to others. Instead, he may wish that the harm does not happen, but he has a strong reason to believe that it might.

## **Recklessness Claims**

Recklessness is a common law tort that has been around for many centuries. The tort may also be called "willful negligence," "wanton and willful negligence," or "wanton and willful misconduct," in state statutes and court opinions.

In most states, a person can sue for personal injuries and recover compensation for a range of damages resulting from another's reckless behavior. For example, a person may recover compensation for the loss or damage of property, loss of income, or damage to his reputation. A person may also recover for pain, suffering, and medical expenses. Many states also allow people to recover legal costs incurred in pursuing a recklessness tort claim.

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