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## An Overview of the Grossly Inconsistent Definitions of “Gross Negligence” in American Jurisprudence, 48 J. Marshall L. Rev. 471 (2015)

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# AN OVERVIEW OF THE GROSSLY INCONSISTENT DEFINITIONS OF “GROSS NEGLIGENCE” IN AMERICAN JURISPRUDENCE

OLGA VOINAREVICH\*

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## I. ABSTRACT

On one side of the spectrum, certain courts, such as New York, define gross negligence as conduct that borders intentional wrongdoing. On the other side of the spectrum, courts continue to recognize the degrees of negligence and differentiate between various degrees of care. Between these two approaches, there is inconsistency. For instance, some Illinois decisions equate gross negligence to recklessness, while others define it as nothing more than “very great negligence.”<sup>1</sup> This Article concludes that the

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\* Attorney at Ice Miller LLP, Indianapolis, Indiana. J.D., 2014, *The John Marshall Law School*, B.B.A., Marketing and International Business, 2010, *Loyola University Chicago*. First of all, I would like to extend special and most sincere thanks to my husband, family, host-family, the Wolffs (especially Sashenka), and my friends for all of the love, patience, and support throughout the years—I cannot express my appreciation enough. Secondly, thank you to Steve (not “Stephen”) Trimper and Barry Kanarek for sparking my interest in the topic. Thirdly, thank you to the *John Marshall Law Review* and to the 2014–2015 Editorial Board for their valuable and skillful edits; I could not be happier to be published by the candidate class that I will always remember as “my dear ones.” Lastly, this—like everything in my life—is dedicated to my wonderful mom and dad.

latter may be the proper standard relied upon by a majority of the recent decisions interpreting Illinois law, but advocates for a uniform definition to ease the burden on the parties attempting to define this imprecise term. Lastly, it provides a table of various definitions of “gross negligence” among all fifty states.

## II. INTRODUCTION

[W]hen one attempts to define “gross negligence” the concept shatters into a kaleidoscopic disarray of terms, elements and subtle graduations of meaning. It is a legal Tower of Babel, where many voices are heard, but few are generally understood.<sup>2</sup>

This Article identifies inconsistencies between courts’ definitions of “gross negligence.” Although it largely focuses on the definitions of “gross negligence” under New York and Illinois laws, the Article also provides a brief fifty-state survey identifying case law within each jurisdiction and the courts’ application of this term across the state lines. In sum, the Article first provides an overview of negligence and gross negligence. Second, the Article focuses on the interpretation of gross negligence as applied by New York federal and state courts. In doing so, it evaluates New York courts’ application of the term in various contexts involving contract disputes. Third, it discusses the language Illinois courts use to define gross negligence as applied in various contexts. Consequently, it identifies the inconsistencies and disagreement among Illinois courts and analyzes the contradicting definitions of this term. Lastly, it provides a table of cases that lists each jurisdiction’s definition of gross negligence and points to the relevant authorities to aid legal researchers in tackling this nebulous term.

## III. ANALYSIS

### *A. Legal Standard for Gross Negligence and Its Inconsistent Application Across Jurisdictions*

Generally, while a finding of negligence is a question of fact for a jury,<sup>3</sup> “it is the province of the court to lay down the rules by which the jury is to be governed in determining what is

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1. See *infra* Part II (discussing a split between jurisdictions and focusing on New York and Illinois precedent).

2. Daniel O. Howard, *An Analysis of Gross Negligence*, 37 MARQ. L. REV. 334, 334 (1953–54).

3. *Charter Oak Fire Ins. Co. v. Trio Realty Co.*, 99 Civ. 10827 (LAP), 2002 WL 123506, at \*5 (S.D.N.Y. Jan. 31, 2002). See also *Sommer v. Fed. Signal Corp.*, 593 N.E.2d 1365, 1371 (N.Y. 1992); *Food Pageant, Inc. v. Consol. Edison Co.*, 429 N.E.2d 738, 740 (N.Y. 1981).

negligence.”<sup>4</sup> Both ordinary and gross negligence generally require the same elements to establish liability: a duty owed to a plaintiff by a defendant; a breach of that duty; a causal link between the breach and the plaintiff’s losses; and damages.<sup>5</sup> The distinguishing factor between the two causes of action is the defendant’s degree of care, or lack thereof, in causing the alleged losses.

Gross negligence requires a greater lack of care than is implied by the term ordinary negligence.<sup>6</sup> The standard for ordinary negligence is “a failure to use the care which an ordinarily prudent man would use under the circumstances.”<sup>7</sup> Thus, to constitute gross negligence, “the act or omission must be of an aggravated character as distinguished from the failure to exercise ordinary care.”<sup>8</sup>

Over the years, however, courts have struggled with interpreting rules applicable to gross negligence.<sup>9</sup> One court, while attempting to define the term, eloquently described gross negligence as a “twilight zone which exists somewhere between ordinary negligence and intentional injury.”<sup>10</sup> And yet, when taking a peek into this “twilight zone,” the abundant scholarly commentary shows that various jurisdictions apply a myriad of different tests to determine whether a particular conduct amounts to gross negligence.

Some courts have reasoned that gross negligence remains an “inadvertent act,” holding that gross negligence is merely a conduct that is different in *degree* from ordinary negligence (i.e., a very great negligence).<sup>11</sup> Other courts, however, find gross negligence to be different from ordinary negligence in its *nature, quality, or kind*;<sup>12</sup> these jurisdictions require an element of consciousness or intent to harm, which is not found in cases of ordinary negligence.<sup>13</sup> Essentially, the subjective state of mind of an actor is the key factor differentiating the two views because intent, whether implied or actual, creates a different kind of

4. *Terre Haute & I.R. Co. v. Jenuine*, 16 Ill. App. 209, 213 (3d Dist. 1885) (cited in 28 ILL. LAW & PRAC. NEGLIGENCE § 169).

5. See generally *Purchase Partners, LLC v. Carver Fed. Sav. Bank*, No. 09 Civ. 9687, 2012 WL 6641633, at \*13 (S.D.N.Y. Dec.13, 2012).

6. *Internationale Nederlanden Capital Corp. v. Bankers Trust Co.*, 689 N.Y.S.2d 455, 460 (N.Y. App. Div. 1999); *Higgins v. N.Y.C. Hous. Auth.*, 702 N.Y.S.2d 502, 506 (N.Y. Civ. Ct. 1999).

7. See e.g., *Jones v. Chi. HMO Ltd.*, 730 N.E.2d 1119, 1130 (Ill. 2000).

8. *Weld v. Postal Tel. Cable Co.*, 103 N.E. 957, 961 (N.Y. 1913).

9. *Fid. Leasing Corp. v. Dun & Bradstreet, Inc.*, 494 F. Supp. 786 (E.D. Pa. 1980) (stating that meaning of gross negligence varies across jurisdictions).

10. *Pleasant v. Johnson*, 325 S.E.2d 244, 247 (N.C. 1985).

11. W. PAGE KEETON ET. AL., PROSSER & KEETON ON TORTS § 34, at 211, 212 (5th ed. 1984). See e.g., *NMP Corp. v. Parametric Tech. Corp.*, 958 F. Supp. 1536, 1546 (N.D. Okla. 1997).

12. John C. Roberson, *Exemplary Damages for Gross Negligence: A Definitional Analysis*, 33 BAYLOR L. REV. 619, 621 (1981).

13. *Id.*

negligence (if negligence, at all).<sup>14</sup>

Based on these interpretations, New York courts fall squarely into the latter category and require some conscious act on behalf of an actor to infer gross negligence. These courts view gross negligence as more than just a heightened degree of negligence, holding it to be more akin to willful misconduct, as analyzed below in Section B. To the contrary, Section C of this Article summarizes the split between Illinois precedent on the issue. While some Illinois decisions indicate a heightened level of culpability and elevate gross negligence to the level of recklessness, others maintain that gross negligence does not differ in kind from ordinary negligence.

### *B. New York Law Defines Gross Negligence as Conduct That Evinces Reckless Disregard for the Rights of Others or “Smacks” of Intentional Wrongdoing*

#### *1. Legal Standard*

Under New York law, gross negligence differs, “in kind, not only degree, from claims of ordinary negligence.”<sup>15</sup> A seminal case decided by New York’s highest court, *Colnaghi, U.S.A., Inc. v. Jewelers Protection Services*,<sup>16</sup> defined gross negligence as “conduct that evinces reckless disregard for the rights of others or ‘smacks’ of *intentional* wrongdoing.”<sup>17</sup> Such conduct “represents an extreme departure from the standards of ordinary care to the extent that the danger was either known to the defendant or so obvious that the defendant *must have been aware of it*.”<sup>18</sup>

Thus, gross negligence is not just a more egregious example of ordinary negligence; it is more akin to willful misconduct in New York.<sup>19</sup> Even though New York courts do not require an express intent, the state’s law focuses not only on the gravity of a person’s deviation from a reasonable standard of care, but also on his or her

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14. *See id.*

15. *Colnaghi, U.S.A., Inc. v. Jewelers Prot. Servs., Ltd.*, 611 N.E.2d 282 (N.Y. 1993).

16. *Id.* In *Colnaghi*, a company had failed to protect a skylight, which in turn enabled burglars to steal valuable paintings from an art gallery. *Id.* The Court held that “while perhaps suggestive of negligence or even ‘gross negligence’ as used elsewhere, [the failure to wire the skylight] does not evince the recklessness necessary to abrogate [plaintiff’s] agreement to absolve [defendant] from negligence claims.” *Id.* at 284.

17. *Id.* (emphasis added).

18. *Saltz v. First Frontier, L.P.*, 782 F. Supp. 2d 61, 75 (S.D.N.Y. 2010) (emphasis added), *aff’d*, 485 F. App’x 461 (2d Cir. 2012).

19. David Shine, *Contractual Applications of Negligence/Gross Negligence Standards: Considerations Under New York Law*, THE M&A LAWYER, 10 (Apr. 2005), available at <http://www.friedfrank.com/siteFiles/Publications/056EFA672B52519D1926370EFAF84809.pdf>.

subjective state of mind. Accordingly, New York courts may find gross negligence either “where there is a reckless indifference . . . or an intentional failure to perform a manifest duty to the public, in the performance of which the public and the party injured have interests.”<sup>20</sup>

To determine whether a person acted with reckless indifference or disregard, the person’s conduct must show actions that lack “even slight care” or are “so careless as to show complete disregard for the rights and safety of others.”<sup>21</sup> Similarly, a party claiming willful misconduct must show an “intentional act of unreasonable character performed in disregard of a known *or* obvious risk so great as to make it highly probable that harm would result.”<sup>22</sup> A noticeable similarity exists in New York’s definitions of recklessness and willful misconduct in the context of gross negligence, except the definition of willful misconduct places more emphasis on the harm that a party’s actions or omissions have caused.

New York Pattern Jury Instructions further support this parallel between gross negligence and willful misconduct. Indeed, although it separates the negligence instruction, the New York Pattern Jury Instruction 2:10 (PJI 2:10) lists gross negligence and willful misconduct together. The instruction reads as follows:

In this case, you must decide whether defendant was guilty of (gross negligence, wilful misconduct). Negligence is a failure to exercise ordinary care. (Gross Negligence, wilful misconduct) is more than the failure to exercise reasonable care.

([Use whichever of the following definitions applies])

Gross negligence means a failure to use even slight care, or conduct that is so careless as to show complete disregard for the rights and safety of others.

Wilful [misconduct] occurs when a person intentionally acts or fails to act knowing that (his, her) conduct will probably result in injury or damage. Wilful misconduct also occurs when a person acts in so reckless a manner or fails to act in circumstances where an act is clearly required, so as to indicate disregard of the consequence of (his, her) action or inaction.<sup>23</sup>

Thus, although gross negligence is not the same as

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20. *Int’l Mining Corp. v. Aerovias Nacionales de Colombia, S.A.*, 393 N.Y.S.2d 405, 407 (N.Y. App. Div. 1977) (citing 41 N.Y. JUR. NEGLIGENCE § 28, now 79 N.Y. JUR. NEGLIGENCE 2d § 39 (1989)).

21. *Id.*

22. Linda L. Rhodes, *Limitations on Liability Exceptions for Gross Negligence and Willful Misconduct and the Implications for Outsourcing Agreements*, Bus. & Tech. Sourcing, Summer 2013, at 9, <http://www.mayerbrown.com/Limitations-on-Liability-Exceptions-for-Gross-Negligence-and-Willful-Misconduct-and-the-Implications-for-Outsourcing-Agreements-08-13-2013>.

23. N.Y. PATTERN JURY INSTR., 2:10 (2014).

intentional misconduct, the courts will find gross negligence if it “smacks” of intentional wrongdoing or willful misconduct. This different degree of negligence and its definition is often useful in contract negotiations, as described below.

## 2. *Gross Negligence and Its Application to Various Contractual Provisions*

Although the definition of gross negligence is important in various civil and even criminal cases, the narrow scope of this Article focuses on certain contractual provisions that often implicate gross negligence within its terms. Such provisions include limitations of liability, exculpatory clauses, and indemnification clauses. Even though New York’s standard for gross negligence is seemingly clear, the use of this standard may not be enforceable in such contractual contexts.<sup>24</sup>

New York courts generally hold unenforceable limitations of liability and exculpatory clauses (i.e., contractual exemptions from liability) if these provisions exclude liability caused by a party’s own intentional *or* grossly negligent conduct.<sup>25</sup> Indemnification clauses, on the other hand, which seek to “simply shift the source of compensation without restricting the injured party’s ability to recover,” may be enforceable even when the acts of a party amount to gross negligence.<sup>26</sup> According to New York law, indemnification agreements are unenforceable and are against public policy only if the provision seeks to indemnify a party “for damages flowing from the *intentional* causation of injuries,” not those caused by gross

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24. Shine, *supra* note 19, at 10.

25. *Id.* Kalisch-Jarcho, Inc. v. City of N.Y., 448 N.E.2d 413, 417 (N.Y. 1983) (stating that “an exculpatory agreement, no matter how flat and unqualified its terms, will not exonerate a party from liability under all circumstances. Under announced public policy, it will not apply to exemption of willful or grossly negligent acts.”).

26. *Austro v. Niagara Mohawk Power Corp.*, 487 N.E.2d 267, 267 (N.Y. 1985).

In *Austro*, a plaintiff, who was a contractor’s employee, sued the defendant-power company that had hired the contractor for damages for an electric shock injury. *Id.* A jury found that the defendant’s gross negligence caused the plaintiff’s injuries. The defendant impleaded the employer/contractor, seeking contractual indemnity pursuant to the construction contract between the power company and the employer/contractor. The trial court dismissed the contractual indemnity claim on the grounds that exculpatory agreements would not be read to exempt a willful or grossly negligent party from liability to an injured person. *Id.*

The appellate court reversed the trial court’s decision and ruled in favor of the defendant for complete indemnity against the contractor for the defendant’s gross negligence. *Id.* New York state’s highest court held that indemnification agreements are void as against public policy only to the extent that they purport to indemnify a party “for damages flowing from the *intentional* causation of injuries.” *Id.*

negligence.<sup>27</sup> New York law also allows a party to obtain insurance as protection against its own gross negligence.<sup>28</sup> In this context, New York courts hold that a waiver of subrogation not only bars claims of negligence, but also gross negligence.<sup>29</sup>

### *C. Courts Interpreting Illinois Law Are Split in Their Definitions of Gross Negligence*

In contrast, Illinois does not have a consistent standard for gross negligence.<sup>30</sup> First, unlike New York, the Illinois Pattern Jury Instructions, although defining negligence and willful and wanton misconduct,<sup>31</sup> are silent as to the meaning of gross negligence. Additionally, Illinois case law does not provide much guidance on the issue either. Even though the courts are unanimous that gross negligence does not require any intentional or malicious conduct,<sup>32</sup> there is a sharp split between the actual definitions of gross negligence. Some federal and state courts define it as (1) very great negligence, whereas others equate it to (2) recklessness.

#### *1. Gross Negligence Is Very Great Negligence*

The most recent definition of gross negligence has been announced in cases involving gross negligence under the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA).<sup>33</sup>

27. *Id.* (emphasis added). But, see *Gross v. Sweet*, 400 N.E.2d 306, 310 (N.Y. 1979), where the New York’s highest court stated, when discussing indemnity agreements, that “to grant exemption from liability for willful or grossly negligent acts . . . have been viewed as wholly void.” *Id.* at 308. The court recognized, however, that “sophisticated business entities” can make broad indemnity contracts that will be enforceable, so long as the agreement reflects the “unmistakable intent of the parties.” *Id.* at 310. In any event, the *Gross* opinion predates the New York Court of Appeals’ decision, six years later, in *Austro*.

28. See, e.g., *Pub. Serv. Mutual Ins. Co. v. Goldfarb*, 425 N.E.2d 810, 815 (N.Y. 1981) (“indemnity for compensatory damages would be allowable” for acts of “gross negligence, recklessness or wantonness”); *Town of Massena v. Healthcare Underwriters Mut. Ins. Co.*, 779 N.E.2d 167, 171 (N.Y. 2002) (although insurance coverage for intentional injuries cannot “[a]s a matter of policy . . . [be] covered by insurance,” insurance coverage for “reckless” conduct “would not be precluded by public policy”).

29. *Great Am. Ins. Co. of New York v. Simplexgrinnell LP*, 60 A.D.3d 456, 457 (N.Y.S. 2009) (holding that a waiver of subrogation provision in an agreement, which is neither overreaching nor procedurally or substantively unconscionable, bars claims for gross negligence).

30. In fact, Illinois does not seem to really recognize gross negligence as a separate cause of action, with some exceptions, beyond the scope of this Article.

31. ILL. PATTERN JURY INSTR., 10.1, 14.01 (2014).

32. *Chi. City Ry. Co. v. Jordan*, 74 N.E. 452, 454 (Ill. 1905).

33. 12 U.S.C. § 1821(k).

In a 2013 opinion, *F.D.I.C. v. Giannoulis*,<sup>34</sup> the United States District Court for the Northern District of Illinois held that the proper standard for gross negligence is “very great negligence,” which is “something less than the willful, wanton and reckless conduct.”<sup>35</sup> The court in *Giannoulis* relied on the Illinois Supreme Court opinion in *Massa v. Department of Registration and Education*,<sup>36</sup> which announced that “very great negligence” is the proper standard in Illinois.

As a result, numerous recent decisions, including<sup>37</sup> *F.D.I.C. v. Amy*,<sup>38</sup> *F.D.I.C. v. Mahajan*,<sup>39</sup> *F.D.I.C. v. Spangler*,<sup>40</sup> and *F.D.I.C. v. Gravee*,<sup>41</sup> support *Massa*’s definition and hold that gross negligence does not amount to recklessness. All of these opinions concur that, while gross negligence contemplates something more than ordinary negligence, it is still a want of reasonable care under the circumstances.<sup>42</sup>

Judge Frank H. Easterbrook, while writing for the Court of Appeals for the Seventh Circuit, implicitly agreed with this reasoning as well.<sup>43</sup> In his usual, articulate manner, Judge Easterbrook explained that:

Gross negligence blends into negligence; there is an indistinct and unusually invisible line between benefits exceeding the cost of precautions (negligence) and benefits substantially exceeding the costs (gross negligence). The malleable quality of these terms has produced scoffing among many, who see gross negligence as simply negligence “with the addition of a vituperative epithet.”<sup>44</sup>

He then summarily concluded that “[r]ecklessness’ is a proxy for intent; [while] ‘gross negligence’ is not.”<sup>45</sup> Thus, numerous cases, citing Judge Easterbrook’s interpretation and adopting *Massa*’s definition, agree that gross negligence falls short of willful, wanton or reckless conduct.<sup>46</sup>

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34. 918 F. Supp. 2d 768 (N.D. Ill. 2013).

35. *Id.* at 771–72.

36. 507 N.E.2d 814, 819 (Ill. 1987).

37. Listed in chronological order starting with the most recent.

38. 13 C 5888, 2014 WL 1018136 (N.D. Ill. Mar. 13, 2014).

39. 11 C 7590, 2012 WL 3061852 (N.D. Ill. July 26, 2012).

40. 836 F. Supp. 2d 778 (N.D. Ill. 2011).

41. 966 F. Supp. 622 (N.D. Ill. 1997).

42. *Id.* at 636–37.

43. *Archie v. City of Racine*, 847 F.2d 1211, 1219 (7th Cir. 1988) (describing gross negligence in the context of Due Process).

44. *Id.* (citing *Wilson v. Brett*, [1843] 11 M. & W. 113, 116, 152 Eng. Rep. 737 (Rolfe, B.)) (emphasis added).

45. *Id.*

46. *See Gravee*, 966 F. Supp. at 636–37; *Spangler*, 836 F. Supp.2d at 785.

## 2. *Gross Negligence Is Recklessness*

To the contrary, *Resolution Trust Corp. v. Franz*<sup>47</sup> refused to follow *Massa*'s definition of gross negligence and deemed it to require “something less than intent [but] something *more* than negligence.”<sup>48</sup> As such, the federal district court equated gross negligence to “recklessness,”<sup>49</sup> or “a course of action which . . . shows an utter indifference to or a conscious disregard for a person’s own safety and the safety of others.”<sup>50</sup>

To support its proposition, the court in *Resolution Trust* considered definitions of gross negligence in Illinois criminal law, secondary sources, and various precedents.<sup>51</sup> The court primarily justified its conclusion by citing the Illinois Supreme Court case, *Ziarko v. Soo Line Railroad Company*,<sup>52</sup> which indicated that Illinois courts often use the terms gross negligence and “willful and wanton conduct” interchangeably:<sup>53</sup>

[W]illful and wanton conduct has two aspects, a recklessness aspect and an intentional aspect. If gross negligence is similar to recklessness, and willfulness and wantonness has an aspect of recklessness, we would expect Illinois courts to sometimes use gross negligence and willfulness and wantonness interchangeably. They would because the intersection of gross negligence and willfulness and wantonness would be the subset of recklessness.<sup>54</sup>

According to *Resolution Trust* and *Ziarko*, an inevitable intersection of recklessness, willfulness, and wantonness molds into gross negligence, creating a hybrid between these terms. This explanation seems plausible, but it is important to note that when arriving at this conclusion, the court in *Resolution Trust* had to ignore an already established definition in *Massa*. So, how did *Resolution Trust* get around the Illinois Supreme Court precedent?

The court deemed *Massa*'s definition “unremarkable” and discounted it for the following four reasons.<sup>55</sup> First, it held that

47. 909 F. Supp. 1128 (N.D. Ill. 1995).

48. *Id.* at 1139.

49. *Id.* See also 28 ILL. LAW & PRAC. NEGLIGENCE § 5.

50. *Resolution Trust*, 909 F. Supp. at 1141.

51. *Id.*

[W]e discover that Illinois criminal law defines gross negligence as recklessness. . . . “[T]he terms . . . ‘gross neglect’ or ‘gross negligence’ are the historical predecessors of the term ‘recklessness’ and have the same meanings.” The term recklessness denotes “a course of action which . . . shows an utter indifference to or a conscious disregard for a person’s own safety and the safety of others.

*Id.* at 1141–42 (internal citations omitted).

52. 641 N.E.2d 402 (Ill. 1994).

53. *Id.* at 406.

54. *Id.*; see also *Oropeza v. Bd. of Educ.*, 606 N.E.2d 482, 484–85 (Ill. App. Ct. 1992) (defining “willful and wanton negligence”).

55. *Resolution Trust*, 909 F. Supp. at 1141.

*Massa's* definition of gross negligence as "very great negligence" is not "helpful."<sup>56</sup> "What is very great negligence?"<sup>57</sup> the court justifiably questioned. Second, the court indicated that *Massa* used the definition "out of context."<sup>58</sup> Third, it specified that *Massa's* definition is a "dead letter" because "in the over eight years since the court handed down *Massa*, no other court has cited its definition of gross negligence . . . despite the subsequent watershed opinions in the area of comparable culpability."<sup>59</sup> Lastly, *Massa* defined "gross negligence at the low end of that term's possible culpability range, but due process leads [courts] to define it at the high end."<sup>60</sup> For all of these reasons, *Resolution Trust* ignored the decision and held that gross negligence is recklessness in Illinois.<sup>61</sup>

To complicate things even further, the *Resolution Trust's* rationale is not novel or uncommon in Illinois jurisprudence.<sup>62</sup> In fact, centuries of various precedents have supported this view. For years, other courts have used gross negligence in the context of recklessness and stated that "gross negligence . . . implies a willful injury,"<sup>63</sup> or "just[ies] the presumption of willfulness or wantonness" if it "impl[ies] a disregard of consequences or a willingness to inflict injury."<sup>64</sup>

In sum, there is no uniform definition of gross negligence amongst Illinois courts. Given the recent cases stating that gross negligence is "very great negligence"<sup>65</sup> that falls short of recklessness, *Massa's* definition does not seem to be "unhelpful" anymore. Perhaps now, it is *Resolution Trust's* holding that has become the "dead letter" in Illinois. Thus, this Article subjectively concludes that the proper definition of gross negligence is "very great negligence," which places Illinois interpretation in line with the view of other states, such as Vermont, Connecticut, Massachusetts, and New Hampshire, to name a few.<sup>66</sup>

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56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.* (citing to *Ziarko*, 641 N.E.2d 402).

60. *Id.*

61. See also *Rush Univ. Med. Ctr. v. Minnesota Min. & Mfg. Co.*, No. 04 C 6878, 2007 WL 4198233, at \*4 (N.D. Ill. Nov. 21, 2007) (citing *Franz* and stating that Illinois law defines "gross negligence" and "willful misconduct" as "recklessness, which means a conscious and deliberate disregard for the rights or safety of others").

62. *Ill. Cent. R.R. Co. v. Beard*, 49 Ill. App. 232, 1893 WL 1992 (4th Dist. 1893) (stating that "[g]ross negligence of itself is not, in law, designed and intentional mischief, although it may be cogent evidence of such fact.>").

63. *Ill. Cent. R.R. Co. v. Goodwin*, 30 Ill. 117, 118 (1863).

64. *Bremer v. Lake Erie & W. R. Co.*, 148 N.E. 862, 866 (Ill. 1925).

65. *Gravee*, 966 F. Supp. at 636-37 (citing *Massa* with approval and declining to follow *Ziarko's* approach).

66. See Part III, *Reference Table, infra* (listing definitions across jurisdictions).

#### IV. CONCLUSION AND REFERENCE TABLE

The concept of gross negligence is difficult to define. The term is “so nebulous” as to have “no generally accepted meaning.”<sup>67</sup> Although courts in New York seem to have a better articulated definition of gross negligence, courts in many other jurisdictions, including Illinois, continue to battle with the proper meaning of this tort.

To illustrate the drastic difference between various jurisdictions, below is a table briefly summarizing the definitions of “gross negligence” in all fifty states.

#### Reference Table: Definitions of “Gross Negligence” Across Jurisdictions

Jurisdiction	Precedent (internal citations are omitted for brevity purposes)
Alabama	See <i>Miller v. Bailey</i> , 60 So. 3d 857, 867 (Ala. 2010) (“‘Gross negligence’ is negligence, not wantonness”); <i>Ridgely Operating Co. v. White</i> , 150 So. 693, 695 (Ala. 1933) (“Ordinarily, ‘gross negligence’ imports nothing more than simple negligence or want of due care.”); <i>Fid.-Phoenix Fire Ins. Co. v. Lawler</i> , 81 So. 2d 908, 912 (Ala. Ct. App. 1955) (“[T]he word ‘gross’ when used in connection with negligence, implies nothing more than negligence.”).
Alaska	See <i>Leavitt v. Gillaspie</i> , 443 P.2d 61, 65 (Alaska 1968) (stating that “[g]ross negligence differs from ordinary negligence in several important particulars” and requiring some “conscious choice of a course of action”). Specifically, the court pointed out that “gross negligence” differs from “ordinary negligence” in that latter consists of mere inadvertence, incompetence, unskillfulness, or failure to take precautions and gross negligence requires conscious choice of course of action with knowledge that it contains risk of harm to others. (quoting the RESTATEMENT (SECOND) OF TORTS § 500, cmt. g (1965) to point out differentiating factors).
Arizona	<i>Williams v. Thude</i> , 934 P.2d 1349, 1351 (Ariz. 1997) (“Gross negligence and wanton conduct have generally been treated as one and the same.”) ( <i>citing</i> <i>DeElena v. S. Pac. Co.</i> , 592 P.2d 759, 762 (Ariz. 1979) (“[I]t is settled that wanton misconduct is aggravated negligence.”); <i>Kemp v. Pinal Cnty.</i> , 13 Ariz. App. 121, 124, 474 P.2d 840 (Ariz. App. 1970) (“A person can be very negligent and still not be guilty of gross negligence.”); <i>see also</i> <i>Harrelson v. Dupnik</i> , 970 F. Supp. 2d 953, 975 (D. Ariz. 2013) (“Gross negligence is different from ordinary negligence ‘in quality and not degree.’).

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67. See PROSSER & KEETON, *supra* note 11.

Arkansas	<p><i>See Doe v. Baum</i>, 72 S.W.3d 476, 487 (Ark. 2002) (citing BLACK'S LAW DICTIONARY and using "gross negligence and "reckless negligence" interchangeably); <i>but see Spence v. Vaught</i>, 367 S.W.2d 238, 240 (Ark. 1963) ("Negligence is the failure to use ordinary care . . . . Gross negligence is the failure to use even slight care . . . . Willful negligence is the same as gross negligence with the added factor that the actor knows, or the situation is so extremely dangerous that he should know, that his act or failure to act will probably cause harm.")</p>
California	<p><i>See City of Santa Barbara v. Superior Court</i>, 161 P.3d 1095, 1099 Cal. 2007) ("Gross negligence long has been defined in California and other jurisdictions as either a want of even scant care or an extreme departure from the ordinary standard of conduct."); <i>Donnelly v. S. Pac. Co.</i>, 118 P.2d 465, 468–69 (Cal. 1941) (explaining that "[w]illfulness and negligence are contradictory terms"). Specifically, the court stated:</p> <p>If conduct is negligent, it is not willful; if it is willful, it is not negligent. It is frequently difficult, however, to characterize conduct as willful or negligent. A tort having some of the characteristics of both negligence and willfulness occurs when a person with no intent to cause harm intentionally performs an act so unreasonable and dangerous that he knows, or should know, it is highly probable that harm will result. Such a tort has been labelled 'willful negligence', 'wanton and willful negligence', 'wanton and willful misconduct', and even 'gross negligence'. It is most accurately designated as wanton and reckless misconduct. It involves no intention, as does willful misconduct, to do harm, and it differs from negligence in that it does involve an intention to perform an act that the actor knows, or should know, will very probably cause harm.</p> <p><i>Id.</i> at 468–69.</p>
Colorado	<p><i>See Adams v. Colo. &amp; S. Ry. Co.</i>, 113 P. 1010 (1911) (degrees of negligence are not recognized in Colorado); <i>Hamill v. Cheley Colo. Camps, Inc.</i>, 262 P.3d 945, 954 (Colo. App. 2011) ("Gross negligence is willful and wanton conduct, that is, action committed recklessly, with conscious disregard for the safety of others.")</p>
Connecticut	<p><i>See 19 Perry St., LLC v. Unionville Water Co.</i>, 987 A.2d 1009, 1022, n. 10, 11 (Conn. 2010) (summarizing that the court "ha[s] defined gross negligence as 'very great or excessive negligence, or as the want of, or failure to exercise, even slight or scant care or slight diligence'" (quoting 57A Am. Jur. 2d 296–97, Negligence § 227 (2004)); <i>see also</i> 57A Am. Jur. 2d 296–97, Negligence § 227 (2004) ("Gross negligence means more than momentary thoughtlessness, inadvertence or error of judgment; hence, it requires proof of something more than the lack of ordinary care. It implies an extreme departure from the ordinary standard of care, aggravated disregard for the rights and safety of others, or negligence</p>

	<p>substantially and appreciably greater than ordinary negligence.”); <i>Hanks v. Powder Ridge Rest. Corp.</i>, 885 A.2d 734, 756 (Conn. 2005) (Norcott, J., dissenting) (“This court has construed gross negligence to mean no care at all, or the omission of such care which even the most inattentive and thoughtless seldom fail to make their concern, evincing a reckless temperament and lack of care, practically [wilful] in its nature.”).</p>
Delaware	<p><i>See Jardel Co. v. Hughes</i>, 523 A.2d 518, 530 (Del. 1987) (“Gross negligence, though criticized as a nebulous concept, signifies more than ordinary inadvertence or inattention. It is nevertheless a degree of negligence, while recklessness connotes a different type of conduct akin to the intentional infliction of harm.”).</p> <p>In Delaware tort law the term “gross negligence” has little significance. Simple negligence suffices for recovery of compensatory damages, and where reckless (wanton) or wilful conduct is required, either as a threshold for recovery . . . or as a prerequisite for the recovery of punitive damages, even gross negligence will not suffice.) The Court also specifically pointed out that certain Delaware decisions used to equate gross negligence with recklessness, but declined to deem those authoritative. <i>Id.</i> at n. 9.</p>
Florida	<p><i>See Vallejos v. Lan Cargo S.A.</i>, 116 So. 3d 545, 552 (Fla. Dist. Ct. App. 2013) (“Gross negligence requires: (1) circumstances constituting an imminent or clear and present danger amounting to a more than normal or usual peril, (2) knowledge or awareness of the imminent danger on the part of the tortfeasor, and (3) an act or omission that evinces a conscious disregard of the consequences.”).</p>
Georgia	<p><i>See Johnson v. Omondi</i>, 751 S.E.2d 288, 291 (Ga. 2013) (stating that</p> <p>gross negligence is the absence of even slight diligence, and slight diligence is defined in OCGA § 51–1–4 as “that degree of care which every man of common sense, however inattentive he may be, exercises under the same or similar circumstances.” In other words, gross negligence has been defined as “equivalent to (the) failure to exercise even a slight degree of care[,]” or “lack of the diligence that even careless men are accustomed to exercise.”);</p> <p><i>Cent. R.R. Co. v. Denson</i>, 11 S.E. 1039, 1041 (Ga. 1890) (“Gross negligence may be ‘so gross as to amount to wantonness or recklessness.’”).</p>
Hawaii	<p><i>See Iddings v. Mee-Lee</i>, 919 P.2d 263, 285 (Haw. 1996); <i>see also Pancakes of Hawaii, Inc. v. Pomare Props. Corp.</i>, 944 P.2d 83, 90 (Haw. Ct. App. 1997) (stating that “[g]ross negligence . . . is a step below willful misconduct” but is not synonymous with “negligence”). The court further cited to the following definition:</p>

	<p>Gross negligence includes indifference to a present legal duty and . . . utter forgetfulness of legal obligations so far as other persons may be affected. It is a heedless and palpable violation of a legal duty respecting the rights of others. The element of culpability that characterizes all negligence is in gross negligence magnified to a high degree as compared with that present in ordinary negligence. Gross negligence is a manifestly smaller amount of watchfulness and circumspection than the circumstances require of a person of ordinary prudence. But it is something less than willful, wanton and reckless conduct.</p> <p><i>Id.</i></p>
Idaho	<p><i>See</i> S. Griffin Const., Inc. v. City of Lewiston, 16 P.3d 278, 286 (Idaho 2000) (collecting cases and stating that common law definitions of gross negligence typically include (1) “[t]he want of even a slight care and diligence,”(2) “the want of that diligence that even careless men are accustomed to exercise,” and (3) “the want of that care which every man of common sense, however inattentive he may be, takes of his own property”). In other words, “negligence means just what it indicates, gross or great negligence; that is negligence in a very high degree.” <i>Id.</i></p>
Illinois	<p><i>See supra</i> Part C.</p>
Indiana	<p><i>See</i> S.C. Nestel, Inc. v. Future Constr., Inc., 836 N.E.2d 445, 451 (Ind. Ct. App. 2005); Wohlwend v. Edwards, 796 N.E.2d 781, 785, n. 2 (Ind. Ct. App. 2003) (stating that the “[u]se of the term ‘gross negligence’ is inappropriate in Indiana because [Indiana’s] common law does not recognize degrees of negligence”); <i>accord</i> Wilshire Serv. Corp. v. Timber Ridge P’ship, 743 N.E.2d 1173 (Ind. Ct. App. 2001); Surratt v. Petrol, Inc., 316 N.E.2d 453, 453–54 (Ind. Ct. App. 1974).</p>
Iowa	<p><i>See</i> Thompson v. Bohlken, 312 N.W.2d 501, 504 (Iowa 1981) (“The term ‘gross negligence’ is said to be nebulous, without a generally-accepted meaning: It implies conduct which, while more culpable than ordinary inadvertence or unattention, differs from ordinary negligence only in degree, not kind.”); Sechler v. State, 340 N.W.2d 759, 762 (Iowa 1983) (noting that Iowa does not recognize degrees of negligence) (citing <i>Hendricks v. Broderick</i>, 284 N.W.2d 209, 214 (Iowa 1979))).</p>
Kansas	<p><i>See</i> Koster v. Matson, 30 P.2d 107, 110 (Kan. 1934) (collecting cases and explaining that the Kansas common law recognizes degrees of negligence and gross negligence consists of failure to exercise slight care); Atchinson v. Baker, 98 P. 804, 807 (Kan. 1908) (explaining that terms “gross negligence” and “willful and wanton conduct” should not be confused).</p>
Kentucky	<p><i>See</i> Phelps v. Louisville Water Co., 103 S.W.3d 46, 52 (Ky. 2003); Lowe v. Commonwealth, 181 S.W.2d 409, 412 (Ky. Ct. App. 1944) (“Two degrees of negligence are recognized in Kentucky: ‘Ordinary negligence,’ or the failure to exercise that care which ordinarily prudent persons would exercise in</p>

	like or similar circumstances; and ‘gross negligence,’ which is the absence of slight care.”).
Louisiana	<p>See <i>Ambrose v. New Orleans Police Dep’t. Ambulance Serv.</i>, 639 So.2d 216, 219-20 (La.1994) (internal quotations and citations omitted) (“Gross negligence has been defined as the want of that diligence which even careless men are accustomed to exercise. Gross negligence has also been termed the entire absence of care and the utter disregard of the dictates of prudence, amounting to complete neglect of the rights of others. Additionally, gross negligence has been described as an extreme departure from ordinary care or the want of even scant care.”); <i>Brown v. Lee</i>, 929 So. 2d 775 (La. Ct. App. 2006) (defining “gross negligence” as “want of even slight care and diligence, and want of that diligence which even careless men are accustomed to exercise”).</p>
Maine	<p>See <i>Beaulieu v. Beaulieu</i>, 265 A.2d 610, 612 (Me. 1970) (stating “[t]here are no degrees of care and no degrees of negligence in this State”), <i>overruled in part</i>; see also <i>Wahlcometroflex, Inc. v. Baldwin</i>, 991 A.2d 44, 48 (defining the term in context of business judgment rule). “Gross negligence is defined as ‘reckless indifference to or a deliberate disregard of the whole body of stockholders or actions which are without the bounds of reason.’” <i>Id.</i> (internal citations to Delaware law are omitted).</p>
Maryland	<p>See <i>Owens-Illinois, Inc. v. Zenobia</i>, 601 A.2d 633, 665 (Md. 1992) (collecting cases and discussing the term in the context of punitive damages); see also <i>Liscombe v. Potomac Edison Co.</i>, 495 A.2d 838, 845–47 (Md. Ct. App. 1985)</p> <p>(Gross negligence is a technical term, it is the omission of that care “which even inattentive and thoughtless men never fail to take of their own property,” it is a violation of good faith . . . . [Gross negligence] is an intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another, and also implies a thoughtless disregard of the consequences without the exertion of any effort to avoid them. Stated conversely, a wrongdoer is guilty of gross negligence or acts wantonly and willfully only when he inflicts injury intentionally or is so utterly indifferent to the rights of others that he acts as if such rights did not exist.)</p>
Massachusetts	<p>See <i>Altman v. Aronson</i>, 121 N.E. 505, 506 (Mass. 1919) (adopting classic definition:</p> <p>Gross negligence is substantially and appreciably higher in magnitude than ordinary negligence. It is materially more want of care than constitutes simple inadvertence. It is an act or omission respecting legal duty of an aggravated character as distinguished from a mere failure to exercise ordinary care. It is very great negligence, or the absence of slight diligence, or the want of even scant care. It amounts to indifference to present legal duty and to utter forgetfulness of legal</p>

	<p>obligations so far as other persons may be affected. It is a heedless and palpable violation of legal duty respecting the rights of others. The element of culpability which characterizes all negligence is in gross negligence magnified to a high degree as compared with that present in ordinary negligence. Gross negligence is a manifestly smaller amount of watchfulness and circumspection than the circumstances require of a person of ordinary prudence. But it is something less than the willful, wanton and reckless conduct which renders a defendant who has injured another liable to the latter even though guilty of contributory negligence, or which renders a defendant in rightful possession of real estate liable to a trespasser whom he has injured. It falls short of being such reckless disregard of probable consequences as is equivalent to a willful and intentional wrong. Ordinary and gross negligence differ in degree of inattention, while both differ in kind from willful and intentional conduct which is or ought to be known to have a tendency to injure. This definition does not possess the exactness of a mathematical demonstration, but it is what the law now affords.</p> <p><i>Id.</i></p> <p><i>See also</i> Christopher v. Father's Huddle Café, Inc., 782 N.E.2d 517, 529 (Mass. App. Ct. 2003) (stating that ordinary and gross negligence differ in degree of inattention, while both differ in kind from willful and intentional conduct which is or ought to be known to have a tendency to injure).</p>
Michigan	<p><i>See</i> Jennings v. Southwood, 521 N.W.2d 230, 232 (Mich. 1994) (adopting gross negligence definition under EMSA and overruling common-law definition in the seminal case <i>Gibbard v. Cursan</i>, 196 N.W. 398 (Mich. 1923)). "Gross negligence, as defined in <i>Gibbard</i>, is not a high-degree or level of negligence. On the contrary, it is merely ordinary negligence of the defendant that follows the negligence of the plaintiff follow[ed] from the negligence of the plaintiff." <i>Id.</i></p>
Minnesota	<p><i>See</i> High v. Supreme Lodge of the World, Loyal Order of Moose, 7 N.W.2d 675, 679 (Minn. 1943) ("Negligence of the highest degree is gross negligence. We defined gross negligence as meaning 'negligence in a very high degree,' 'great or excessive negligence.'" (citing <i>Dakins v. Black</i>, 261 N.W. 870, 872 (Minn. 1935))).</p>

Mississippi	<p>See <i>W. Cash &amp; Carry Bldg. Materials, Inc. v. Palumbo</i>, 371 So. 2d 873, 877 (Miss. 1979) (“There is no precise definition of gross negligence, but one of the approximate definitions may be thus expressed: Gross negligence is that course of conduct which, under the particular circumstances, discloses a reckless indifference to consequences without the exertion of any substantial effort to avoid them. The facts of this case, as the statement thereof reveals, bring it well within that definition and principle.”); see also <i>Turner v. City of Ruleville</i>, 735 So. 2d 226, 230 (Miss. 1999).</p>
Missouri	<p>See <i>Lyons v. Corder</i>, 162 S.W. 606, 609 (Mo. 1913); <i>Hatch v. V.P. Fair Found., Inc.</i>, 990 S.W.2d 126 (Mo. Ct. App. 1999); <i>Duncan v. Mo. Bd. for Architects, Prof’l Eng’rs &amp; Land Surveyors</i>, 744 S.W.2d 524, 532–33 (Mo. Ct. App. 1988); <i>Wall v. Weiler</i>, 200 S.W. 731, 734 (Mo. Ct. App. 1918); <i>Horton v. Terminal Hotel &amp; Arcade Co.</i>, 89 S.W. 363, 364 (Mo. Ct. App. 1905) (“[O]mission to use the degree of care which even the most inattentive and thoughtless never failed to take of their own concerns.”).</p>
Montana	<p>See <i>Rusk v. Skillman</i>, 514 P.2d 587, 589 (Mont. 1973) (defining gross negligence as the “<i>failure to use slight care</i>.”); <i>Liston v. Reynolds</i>, 223 P. 507, 511–12 (Mont. 1924) (“Under the law of this state a difference in degrees of negligence is recognized . . . . ‘A willful act involves no negligence. It is a contradiction in terms to say that an act was done “willfully and negligently.””).</p>
Nebraska	<p>See <i>Palmer v. Lakeside Wellness Ctr.</i>, 281 Neb. 780, 786, 798 N.W.2d 845, 850 (2011) (“Gross negligence is great or excessive negligence, which indicates the absence of even slight care in the performance of a duty. Whether gross negligence exists must be ascertained from the facts and circumstances of each particular case and not from any fixed definition or rule.”).</p>
Nevada	<p>See <i>Stiff v. Holmes</i>, 450 P.2d 153, 155 (Nev. 1969) (“In its simplest definition gross negligence means nothing more nor less than ‘great negligence.’”) (quoting <i>Rogers v. S. Pac. Co.</i>, 227 P.2d 979, 982 (Or. 1951) (guest statute context); <i>Hart v. Kline</i>, 116 P.2d 672, 673–74 (Nev. 1941).</p>
New Hampshire	<p>See <i>Corrigan v. Clark</i>, 36 A.2d 631, 632 (N.H. 1944) (adopting “classic” definition from <i>Altman</i>, 121 N.E. at 506).</p> <p>Gross negligence is substantially and appreciably higher in magnitude than ordinary negligence. It is materially more want of care than constitutes simple inadvertence. It is an act or omission respecting legal duty of an aggravated character as distinguished from a mere failure to exercise ordinary care. It is very great negligence, or the absence of slight diligence, or the want of even scant care. It amounts to indifference to present legal duty and to utter forgetfulness of legal obligations so far as other persons may be affected. It is a heedless and palpable violation of legal duty respecting the rights of others. The element of</p>

	<p>culpability which characterizes all negligence is in gross negligence magnified to a high degree as compared with that present in ordinary negligence. Gross negligence is a manifestly smaller amount of watchfulness and circumspection than the circumstances require of a person of ordinary prudence. But it is something less than the willful, wanton and reckless conduct which renders a defendant who has injured another liable to the latter even though guilty of contributory negligence, or which renders a defendant in rightful possession of real estate liable to a trespasser whom he has injured. It falls short of being such reckless disregard of probable consequences as is equivalent to a willful and intentional wrong. Ordinary and gross negligence differ in degree of inattention, while both differ in kind from willful and intentional conduct which is or ought to be known to have a tendency to injure. This definition does not possess the exactness of a mathematical demonstration, but it is what the law now affords.</p> <p><i>Altman</i>, 121 N.E. at 506.</p>
New Jersey	<p><i>See Kain v. Gloucester City</i>, 94 A.3d 937, 947 (N.J. Super. Ct. App. Div. 2014)</p> <p>(“Although the statute does not define gross negligence, the term is commonly associated with egregious conduct, <i>see Stelluti v. Casapenn Enters., LLC</i>, 975 A.2d 494, 508, n.6 (N.J. Super. Ct. App. Div. 2009), <i>aff’d</i>, 1 A.3d 678 (N.J. 2010), and is used to describe ‘the upper reaches of negligent conduct.’ <i>Parks v. Pep Boys</i>, 659 A.2d 471, 478, n.6 (N.J. Super. Ct. App.Div.1995).”);</p> <p><i>Oliver v. Kantor</i>, 6 A.2d 205, 207 (N.J. 1939)</p> <p>(Gross negligence is a relative term that does not lend itself to precise definition automatically resolving every case. It was introduced into the common law from the civil law; and, on the hypothesis that in a case such as this the duty imposed by the law is to exercise such care as is commensurate with the risk of danger, the modern trend is to reject the common-law divisions of negligence into “gross,” “ordinary” and “slight,” as having “no distinctive meaning or importance in the law,” and tending to uncertainty and confusion in cases such as this, where the duty claimed to have been breached does not have a statutory or contractual origin . . . . At most, the difference between “gross” and “ordinary” negligence is one of degree rather than of quality. While there is authority for the view that gross negligence is not characterized by inadvertence, but connotes “some degree of intent to cause” injury, the commonly accepted definition of the term is the want or absence of, or failure to exercise, slight care or diligence. This seems to be the definition at common law.)</p>
New Mexico	<p><i>See Paiz v. State Farm Fire &amp; Cas. Co.</i>, 880 P.2d 300,</p>

	309 (N.M. 1994) (stating that "the concept of gross negligence . . . is a legal anachronism in New Mexico").
New York	<i>See supra</i> Part B.
North Carolina	<i>See</i> Yancey v. Lea, 550 S.E.2d 155, 157 (N.C. 2001) (using the terms "gross negligence" and "willful and wanton conduct" interchangeably to refer to conduct that is "somewhere between ordinary negligence and intentional conduct.") "Gross negligence" is defined as "wanton conduct done with conscious or reckless disregard for the rights and safety of others," and an act is said to be wanton "when it is done of wicked purpose, or when done needlessly, manifesting a reckless indifference to the rights of others." <i>Id.</i> <i>See also</i> Boryla-Lett v. Psychiatric Solutions of N. Carolina, Inc., 685 S.E.2d 14, 19 (N.C. App. 2009) ("The distinction between negligence and gross negligence is not merely a question of degree of inadvertence or carelessness but one of reckless disregard.").
North Dakota	<i>See</i> Sheets v. Pendergrast, 106 N.W.2d 1, 5 (N.D. 1960) ("[G]ross negligence is, to all intents and purposes, no care at all. It is the omission of such care which even the most inattentive and thoughtless persons seldom fail to take of their own affairs, and it is such conduct as evidences a reckless temperament. It is such a lack of care that it is practically willful in its nature.").
Ohio	<i>See</i> Payne v. Vance, 133 N.E. 85, 88 (Ohio 1921) (discussing cases from various jurisdictions and distinguishing between "willful tort" and "wanton negligence" as follows: "Willful tort involves the element of intent or purpose, and is therefore distinguished from negligence, whatever may be its grade, whether slight, ordinary, or gross."); Vidovic v. Hoynes, No. 2014-L-054, 2015 WL 854862 (Ohio Ct. App. Mar. 2, 2015) ("For gross negligence, a plaintiff must show willful and wanton conduct, as well as the intentional failure to perform a duty in reckless disregard of the consequences as affecting the life or property of another."); Winkle v. Zettler Funeral Homes, Inc., 912 N.E.2d 151, 161 (Ohio Ct. App. 2009) (internal quotations and citations omitted) ("Gross negligence is defined as 'the failure to exercise any or very slight care' or 'a failure to exercise even that care which a careless person would use.'"); Jackman v. Karg, No. 16-84-2, 1985 WL 9116, at *2 (Ohio Ct. App. Apr. 30, 1985) ("[T]he Ohio Supreme court defined gross negligence as that 'neglect of duty which amounts to wilfulness and evinces a reckless disregard of the rights of others.'").
Oklahoma	<i>See</i> Myers v. Lashley, 44 P.3d 553, 563, <i>as amended</i> (Okla. Mar. 20, 2002) ("Gross negligence is characterized as reckless indifference to the consequences; it falls short of an intentional wrong's equivalent.")
Oregon	<i>See</i> State v. Hodgdon, 416 P.2d 647, 649 (1966) (citing <i>Williamson v. McKenna</i> , 354 P.2d 56 (1960) and stating that "gross negligence" is more than just an "inadvertent breach of duty" or "imprudent conduct," but is an act accompanied by

	<p>conscious indifference to rights of others or negligence which is increased in magnitude by actor's reckless disregard of rights of others); <i>Howard v. Chimps, Inc.</i>, 251 Or. App. 636, 647, 284 P.3d 1181 (2012), <i>rev. den.</i>, 353 Or. 410, 298 P.3d 1226 (2013) ("To establish gross negligence, [the] plaintiff needed to show that [the] defendant acted with reckless disregard of safety or indifference to the probable consequences of its acts.").</p>
Pennsylvania	<p><i>See Kasanovich v. George</i>, 34 A.2d 523, 525 (Pa. 1943) ("It must be understood, of course, that wanton misconduct is something different from negligence however gross, different not merely in degree but in kind, and evincing a different state of mind on the part of the tortfeasor. Negligence consists of inattention or inadvertence, whereas wantonness exists where the danger to the plaintiff, though realized, is so recklessly disregarded that, even though there be no actual intent, there is at least a willingness to inflict injury, a conscious indifference to the perpetration of the wrong."); <i>see also Keystone Freight Corp. v. Stricker</i>, 31 A.3d 967, 973 (Pa. Super. Ct. 2011) ("Gross negligence is defined as the want of even scant care and the failure to exercise even that care which a careless person would use.") (context of malicious prosecution claim); <i>Bloom v. Dubois Reg'l Med. Ctr.</i>, 597 A.2d 671, 678-79 (Pa. Super. Ct. 1991) (providing a detailed summary of the conflict); <i>Krivijanski v. Union R.R. Co.</i>, 515 A.2d 933, 937 (Pa. Super. Ct. 1986).</p> <p>The prevailing rule in most situations is that there are no "degrees" of care or negligence, as a matter of law; there are only different amounts of care, as a matter of fact. From this perspective, "gross" negligence is merely the same thing as ordinary negligence, "with the addition, . . . of a vituperative epithet."</p> <p>Cases in Pennsylvania do not provide clear guidance. In <i>Henry v. First Fed. Sav. &amp; Loan Ass'n.</i>, 459 A.2d 772 (Pa. Super. Ct. 1983), a panel of this court noted that gross negligence was simply a different degree of negligence and both were premised on the violation of a duty of care owed to the plaintiff. In contrast, the Commonwealth Court defines gross negligence as failure to perform a duty in reckless disregard of the consequences or with such want of care as to justify a conclusion of willfulness or wantonness. <i>Williams v. State Civil Serv. Comm.</i>, 306 A.2d 419, 422 (Pa. Commw. Ct. 1973), <i>aff'd on other grounds</i>, 327 A.2d 70 (Pa. 1974). On the other hand, the Supreme Court has opined on gross negligence in the context of a recent bailment case as follows: ". . . there are no degrees of negligence in Pennsylvania. There are and always have been differing standards of care, however, at least in bailment cases. . . ." <i>Ferrick Excavating v. Senger Trucking Co.</i>, 484 A.2d 744, 749 (Pa. 1984).</p> <p>Although there has not been universal agreement as to</p>

	the meaning of the term gross negligence, it is clear that the term does not encompass wanton or reckless behavior. Bloom, 597 A.2d at 678–79 (citations in original).
Rhode Island	<i>See Leonard v. Bartle</i> , 135 A. 853, 854 (R.I. 1927) (stating that Rhode Island never recognized degrees of negligence, but differentiating based on degrees of care)
South Carolina	<i>See Clark v. S. Carolina Dep’t of Pub. Safety</i> , 608 S.E.2d 573, 576–77 (S.C. 2005) (“Gross negligence is the intentional conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do. Gross negligence is also the “failure to exercise slight care” and is “a relative term and means the absence of care that is necessary under the circumstances.”) <i>Steinke v. S.C. Dep’t of Labor, Licensing &amp; Regulation</i> , 520 S.E.2d 142, 153 (S.C. 1999); <i>Clyburn v. Sumter Cnty. Sch. Dist. # 17</i> , 451 S.E.2d 885, 887 (S.C. 1994); <i>Solanki v. Wal-Mart Store</i> , 763 S.E.2d 615 (S.C. Ct. App. 2014), reh’g denied (Oct. 23, 2014); <i>Chakrabarti v. City of Orangeburg</i> , 743 S.E.2d 109, 113 (S.C. Ct. App. 2013) (recognizing gross negligence as a cause of action), reh’g denied (June 20, 2013) The <i>Chakrabarti</i> court also stated, “Gross negligence is the intentional conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do” and “[g]ross negligence has also been defined as a relative term, and means the absence of care that is necessary under the circumstances.” <i>Id.</i>
South Dakota	<i>See Holzer v. Dakota Speedway, Inc.</i> , 610 N.W.2d 787, 793 (S.D. 2000) (citing to Restatement (Second) of Torts § 500 (1965) and stating that “[c]onduct is gross, willful, wanton, or reckless when a person acts or fails to act, with a conscious realization that injury is a probable, as distinguished from a possible (ordinary negligence), result of such conduct.”) (emphasis in original).
Tennessee	<i>See Inter-City Trucking Co. v. Daniels</i> , 178 S.W.2d 756, 757 (Tenn. 1944) (interpreting gross negligence as “such entire want of care as would raise a presumption of conscious indifference to consequences,” and wanton negligence is a “heedless and reckless disregard for another’s rights with the consciousness that the acts or omission to act may result in injury to another.”).
Texas	<i>See Reeder v. Wood Cnty. Energy, LLC</i> , 395 S.W.3d 789, 796 (Tex. 2012), op. supplemented on reh’g (Mar. 29, 2013) (“Gross negligence has both an objective and a subjective component.”) To prove the subjective component, “courts focus on the defendant’s state of mind, examining whether the defendant knew about the peril caused by his conduct but acted in a way that demonstrates he did not care about the consequences to others.” <i>Id.</i> “Determining whether an act or omission involves peril requires an examination of the events and circumstances from the viewpoint of the defendant at the time the events occurred, without viewing the matter in hindsight.” <i>Id.</i> “An act or omission that is merely ineffective,

	thoughtless, careless, or not inordinately risky is not grossly negligent.” <i>Id.</i>
Utah	<i>See Daniels v. Gamma W. Brachytherapy, LLC</i> , 221 P.3d 256, 269 (“This court has consistently defined gross negligence as ‘the failure to observe even slight care; it is carelessness or recklessness to a degree that shows utter indifference to the consequences that may result.’ Recklessness is subsumed in this court’s definition of gross negligence.”).
Vermont	<i>See Kennery v. State</i> , 38 A.3d 35, 49 (Vt. 2011) (citing <i>Shaw v. Moore</i> , 162 A. 373, 374 (Vt. 1932)). Gross negligence is substantially and appreciably higher in magnitude and more culpable than ordinary negligence. Gross negligence is equivalent to the failure to exercise even a slight degree of care. . . . It is very great negligence, or the absence of slight diligence, or the want of even scant care. It amounts to indifference to present legal duty, and to utter forgetfulness of legal obligations so far as other persons may be affected. It is a heedless and palpable violation of legal duty respecting the rights of others. <i>Id.</i>
Virginia	<i>See Cowan v. Hospice Support Care, Inc.</i> , 603 S.E.2d 916, 918 (Va. 2004). (“Gross negligence’ is a degree of negligence showing indifference to another and an utter disregard of prudence that amounts to a complete neglect of the safety of such other person. This requires a degree of negligence that would shock fair-minded persons, although demonstrating something less than willful recklessness.”) Under Virginia law, gross negligence represents an act or omission more serious than simple negligence, “which involves the failure to use the degree of care that an ordinarily prudent person would exercise under similar circumstances to avoid injury to another.” <i>Id.</i>
Washington	<i>Nist v. Tudor</i> , 407 P.2d 798, 802 (Wash. 1965) (gross negligence is failure to exercise slight care, which is “negligence substantially and appreciably greater than ordinary negligence”); <i>Kelley v. State</i> , 17 P.3d 1189, 1192 (2000).
West Virginia	<i>See Kelly v. Checker White Cab</i> , 50 S.E.2d 888, 892 (W. Va. 1948) (Negligence conveys the idea of heedlessness, inattention, inadvertence; willfulness and wantonness convey the idea of purpose or design, actual or constructive. In some jurisdictions they are used to signify a higher degree of neglect than gross negligence. In order that one may be held guilty of wilful or wanton conduct, it must be shown that he was conscious of his conduct, and conscious, from his knowledge of existing conditions, that injury would likely or probably result from his conduct, and that with reckless indifference to consequences he consciously and intentionally did some

	wrongful act or omitted some known duty which produced the injurious result.).
Wisconsin	<i>See</i> <i>Twist v. Aetna Cas. &amp; Sur. Co.</i> , 81 N.W.2d 523, 525–26 (Wis. 1957) (“To constitute gross negligence there must be either a wilful intent to injure, or that reckless or wanton disregard of the rights and safety of another or his property, and that willingness to inflict injury, which the law deems equivalent to an intent to injure.”); <i>O’Shea v. Lavoy</i> , 185 N.W. 525 (Wis. 1921).
Wyoming	<i>See</i> <i>Mayflower Rest. Co. v. Griego</i> , 741 P.2d 1106, 1115 (Wyo. 1987) (“Although degrees of negligence are not considered in comparative negligence, it must be remembered that the traditional concept of gross negligence visualized less culpable conduct than willful and wanton conduct.”). Moreover, the courts defined gross negligence as: Indifference to present legal duty and to utter forgetfulness of legal obligations so far as other persons may be affected. It is a heedless and palpable violation of legal duty respecting the rights of others. The element of culpability which characterizes all negligence is in gross negligence magnified to a high degree as compared with that present in ordinary negligence. Gross negligence is a manifestly smaller amounts of watchfulness and circumspection than the circumstances require of a person of ordinary prudence. But it is something less than the willful, wanton and reckless conduct. <i>Id.</i>