

# NC PERSONAL INJURY GUIDE

*How to take control of your personal injury claim, before it controls you.*



LAW OFFICES OF

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## *Introduction*

You've been injured, but what happens next? Being involved in an automobile accident can be a scary and an intimidating event, especially if the accident resulted in serious injury. You will face decisions about a number of unfamiliar issues related to the law, the insurance system, and medical treatment. In order to obtain any compensation that might be due, you must deal with the issues appropriately and in a timely manner.

We created this guide to help you gain a general understanding of your rights, the legal process, and potential obstacles you may face when dealing with an injury that happened in North Carolina. We also encourage you to speak to an experienced and well-qualified personal injury attorney to get specific advice about your claim.

“*No one should go through the personal injury process alone. If we can't help, maybe this booklet will.*”

Author, Michael Jordan, Personal Injury Attorney and Shareholder



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IMAGES USED DO NOT REPRESENT ACTUAL EVENTS OR REAL PEOPLE.



# *The Basics & What to Do First*

## **What's in This Section?**

- 1. What to Do First**
- 2. The Basics of Proving Your Case**
  - Liability
  - Causation
  - Damages
  - Insurance
  - Health Insurance
  - Settlement
  - Conclusion

“*Many people wait to take action until the insurance company starts being unfair — that's often too late.*”

Mike Shepherd, Attorney and Former Investigator for the Insurance Companies



## WHAT TO DO FIRST

*Treatment for your injuries helps you and can help your case.*

First and foremost, it is important to immediately seek appropriate medical treatment for any injury. The type of treatment necessary depends upon the injury. The more severe the injury, the more diligent you should be about making sure you see a specialist as soon as possible. **It is not uncommon for an accident victim to feel fine initially but later feel extreme soreness, tightness, or muscle spasms.** Initial x-rays or other diagnostic exams can confirm whether there are any broken bones or fractures.

You should keep all appointments and follow through with the recommended treatment, maintain a record of all treatment, and keep a copy of all receipts for treatment, medications, and other out-of-pocket expenses. We also strongly recommend you take pictures of any visible injury.





# THE BASICS OF PROVING YOUR CASE

In order to recover for your damages, you will have to show that someone else is at fault and their conduct was the cause of your injury. Once you establish liability and causation, you have to prove your damages to recover anything from the insurance carriers. Then, when you reach the settlement stage, you are likely to have to deal with additional bills, like unpaid medical expenses or reimbursement to your health insurance provider. Generally speaking, personal injury settlements are not taxed.

## Liability

At a base level, liability is the legal way of ascribing fault and responsibility for a crash. **North Carolina is a contributory negligence (*contrib*) state. This means that if you are even just 1% at fault for the crash, you may be barred from recovering from the other party or parties involved. We are one of only five jurisdictions in the entire country that still follows this rule.**

Contrib is a tricky issue. For instance, you can be held contrib even if you were hit in an intersection when you had the green light. Contrib can be a very difficult hurdle to overcome, and insurance adjusters are trained to use it to their advantage.

An adjuster may ask you for a recorded statement about the crash. Contrib is a big reason lawyers generally advise you against giving a recorded statement to the other insurance carrier after a crash. Even though you may have done nothing wrong, your words can sometimes be twisted and used against you, if you are not careful enough.

If the adjuster accepts liability for the crash, he or she will then begin to move forward with your claim. The adjuster may make an offer for your property damage and begin trying to talk to you about your injury claim. Settling your property damage claim should not harm your injury claim, but you need to be sure the release you sign is only for the property damage claim. Generally speaking, we encourage unrepresented victims not to discuss their injuries with the adjuster until they have completed their medical care, other than to let the adjuster know that they are still receiving treatment for their injuries.

## Causation

Causation is simply proving your damages were caused by the negligence of someone else. However, proving causation may not be so simple. **For example, insurance companies may argue that your back injury is the result of age or other issues. Or they may argue a prior injury is the real problem, even if you say the prior injury had completely healed.**

And, of course, there are times when a new injury actually does overlap or aggravate an existing medical condition. You have to be able to prove how much worse the condition is due to the crash in order to prove causation, but it is frequently difficult to place a value on exactly how much worse the new injury is versus the existing injury. Once you establish causation, your recovery for damages may still be limited in other ways.

## Damages

Causation and damages are closely linked. The word damages is a broad term for your losses — whether that be bills for medical treatment, lost wages, or pain and suffering.

Damages can be broken down into two sub-categories: general damages and special damages. Special damages are easy to remember. They are the tangible losses. They include things like the cost of medical treatment, lost income, and property damage.

General damages are what are commonly called pain and suffering. However, pain and suffering is a somewhat misleading label and is widely misunderstood. General damages do not just include money for living with pain. Many people live with pain every day and for many different reasons. General damages are meant to compensate you for the disruption of your life the injury has caused you.

A claim for pain and suffering may often include time you are missing from work or family events. Not being able to hold your child, and countless other inconveniences and disruptions incurred because some other person caused you to be injured. It can, of course, refer to actual physical or emotional pain. There are many factors you can argue under the umbrella of pain and suffering; but the best arguments are those documented by medical notes and your own personal journal.

In 2011, North Carolina enacted a law that says you can only be reimbursed the amount actually paid for your medical care, which is usually substantially lower than the actual amount of the medical bills. This means the at-fault person can get a break on how

much they owe you for your injuries if you have paid for health insurance. On top of that, health insurance usually has to be repaid, which can be devastating in a case with high medical bills.

**If you had to miss time from work, you may also have a lost wage claim.** In order to prove lost wages, you will need to have the cooperation of your employer and medical provider. It's best to have a written medical excuse and a form your employer fills out documenting all time missed, your rate of pay, and total financial loss. Lost wages are much harder to prove if you are self-employed. **You can only recover wages that are reported and documented.**

## Insurance

There are two basic types of liability insurance that may apply in a motor vehicle claim: personal and commercial. The coverages that will apply to your claim are those that were in place on the day of the injury.

### Personal Insurance

*(Vehicles owned by individuals)*

A vehicle owned by an individual will be insured under a private policy, such as one you or I might purchase. The minimum limit required by law is commonly called a 30/60/25 policy. This means the most the policy would be required to pay for injuries to a single individual would be \$30,000. However, the most the policy would be required to pay for any crash — no matter how many people were injured — is \$60,000. And the most the policy would have to pay for property damage is \$25,000. Of course, anyone can purchase much higher coverage than the minimum limits, or they may even purchase an umbrella policy, but the majority of vehicles on the road carry only the minimum amount.

### When to Use Your Insurance

This is why first-party coverage becomes significant. A first-party policy is your own coverage. For the sake of simplicity, we'll also broadly apply the phrase to refer to policies *(other than liability)* on the vehicle you were in and vehicles owned by any relatives you were living with at the time of the crash. These policies can also be applied to your claim in some circumstances and do not carry insurance points.

The primary types of first-party coverage that can help you in a crash are medical payments (*MedPay*) coverage and combined uninsured/underinsured (*UM/UIM*) coverage. **MedPay is a no-fault coverage that can reimburse you for medical**

**expenses, even if someone else is at fault or your medical bills are otherwise covered.** MedPay is an optional coverage, but it is very cheap. UM kicks in if the at-fault vehicle does not have coverage. It will assume responsibility for your claim in place of the non-existent at-fault coverage.

UM is mandatory on all policies in NC. UIM comes into play only if your coverage limit is higher than the liability limit; then, your UIM can pay up to the difference between your limit and the liability limit. This can be even more confusing when multiple UIM policies are involved. UIM is an optional coverage, and you can only purchase it if your own limits are at least \$50,000, which is the next step above minimum limits.

### Commercial Insurance

*(Vehicles owned by companies)*

Commercial policies may have much higher limits than private policies. North Carolina requires interstate trucking companies to carry at least \$750,000 in coverage, and many interstate trucks carry \$1,000,000 or more. However, some states *(such as Florida)* do not require any insurance for interstate trucks.

When dealing with a commercial policy, it is important to understand the applicable USDOT rules. Also, like airplanes, big trucks will have a black box that records data, which can be very useful in analyzing the cause of a crash. Of course, tractor trailers are not the only vehicles to carry commercial coverage. Any fleet vehicle or company-owned vehicle should fall under a commercial policy. Many commercial policies carry substantially higher limits than private policies carry.

In any event, you will deal with an insurance adjuster in your claim. Most companies assign one adjuster to handle the property damage *(payment for your vehicle)* and a different adjuster to handle your bodily injury claim. **The adjuster is an employee of the insurance company, and part of his or her job may be to save money for the insurance company.**





Health Insurance

While we’re on the subject of insurance, it is useful to note that, when possible, you should file bills for your medical treatment with your health insurance. As mentioned previously, you often will have to repay any bills covered by your health insurance. **The big issue is that in a serious injury claim, the bills may sometimes exceed the available recovery amount.**

There are a myriad of applicable state and federal laws that come into play. Even many experienced lawyers can be confused by the subrogation and lien laws in place now. Unfortunately, failure to follow the rules can lead to cancellation of your health insurance or even criminal charges in cases involving government-sponsored health insurance.

Of course, not everyone has health insurance. Trying to get medical treatment when you don’t have health insurance can seem overwhelming. Some medical providers will treat on a lien, which simply means they have a direct legal claim against any proceeds from your injury claim. Other providers may treat on a sliding scale.

Regardless of how you pay for medical care, you should always make sure to seek the appropriate level of care in order to protect your health.

Settlement

Once you have completed treatment, reached maximum medical improvement (*MMI*), or exceeded the available coverage, it is time to begin the process of trying to settle your claim with the insurance company.

*You Should Always Make Sure to Seek the Appropriate Level of Care in Order to Protect Your Health.*

Negotiating to full value takes knowledge, patience, persistence, and skill. Unfortunately, even if you have all these traits on your side, there are times when the adjuster simply will not be reasonable. In those times, you need to consider filing a lawsuit.

But even if you are able to resolve your claim, you’ll likely need to deal with various subrogation claims and liens against your proceeds. You may owe doctors or hospitals money. You will likely

owe your health insurance money. In some cases, the liability adjuster will even send the money directly to one of these lien-holders, leaving you with nothing.

**When you settle your claim, you need to know exactly how much money you are getting and how the funds will be distributed. Don’t ever settle a claim without understanding what you owe and where the money will go.**

Part 1 Conclusion

Handling a personal injury case is much more complex now than it was 20 years ago, and insurance companies seem more aggressive than ever. **You are the person who will care the most about your case, so you need to take all appropriate steps to ensure you are protected in order to get the compensation you may deserve.**

We trust this guide and the materials that follow in Part 2 will prove helpful. Feel free to contact us should you have any questions or wish to discuss representation.



STOCK PHOTOS





## *Special Situations*

### **What's in This Section?**

- 1. Tips for Dealing With a Serious Injury**
  - Common Pitfalls
- 2. Special Rules for Trucking Cases**
  - Commercial Vehicles
  - Important Regulations
  - Proving Your Case
- 3. Premises Liability**
  - Lawful Visitor or Trespasser?
- 4. DWI Victims' Rights**
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- 5. Types of Injuries**
  - Head Injury
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  - Life Care Plans

“*The personal injury process is very confusing, and if you don't follow the rules exactly, you can easily damage your case beyond repair.*”

Eric Haase, Shareholder and Head of Personal Injury

# TIPS FOR DEALING WITH A SERIOUS INJURY

*Serious injuries require serious attention.*

- 1. Use your health insurance for all medical care.** Sometimes, people think that because the injury is someone else's fault, they should wait for the liability insurance to pay the bills. There are several problems with this idea. First, there may not be enough insurance to cover all the bills. Second, the liability insurance does not pay as you go; so medical providers are likely to turn your account over to collections or force you to pay out of pocket. Always use your health insurance for serious injury treatment.
- 2. Look into whether you have short-term or long-term disability coverage through an employer or a private policy.** STD and LTD policies can be life-savers if you have a serious injury that keeps you out of work for an extended period of time.
- 3. Similarly, file workers' compensation (WC) if the injury happened while on the job.** If you are eligible, WC will pay for and arrange medical care. It will also provide income while you are unable to work.
- 4. Check all auto insurance policies in your household for underinsured motorist coverage (UIM) and medical payments (MedPay) coverage.** These are no-fault coverages that can make a big difference for you going forward. Since these coverages are not dependent upon fault, they should not add points to your insurance when you use them. Also, if a relative living in the same household has UIM or MedPay, you can typically use their coverage, even if you are not on their policy.

## Common Pitfalls

**Many people accidentally damage their claim. Don't be one of them.** By now, you probably realize an injury claim is not as straightforward as you may have hoped. Many people charge ahead without properly arming themselves with information. Here are a few of the most common traps people fall into when trying to handle claims on their own:

- 1. Not getting proper medical care.**
- 2. Not getting good legal advice.**
  - Even if you don't need or don't hire an attorney, we encourage you to at least speak with a knowledgeable personal injury attorney to get specific feedback about your case.
- 3. Giving a recorded statement.**
  - Particularly in light of contributory negligence (see page 10).
- 4. Failure to understand the medical records.**
  - You need to gather all medical evidence of your injuries and treatment. Medical records are very confusing and can take quite a bit of effort to obtain, especially when multiple providers are involved.
- 5. Not finding all available sources of recovery.**
  - Possible sources of recovery include multiple liability policies, umbrella policies, UM/UIM policies, MP policies, personal assets, trust fund assets, and corporate assets.
  - Failure to investigate assets of the liable party, regardless of how much insurance they had, can be a huge mistake.
- 6. Not pursuing all available coverages.**
  - You need to confirm all applicable insurance coverages, including your own MedPay and UIM coverages, if applicable.
  - Note, there are very specific rules about when you can stack insurance coverages and in what order the claims must be presented.
  - There are also rules about how the claims are presented to different carriers and very specific timelines that must be followed.
  - Failing to present claims in the proper order, within the proper timeframe, or signing the wrong documentation for one coverage can preclude your ability to pursue any other available coverages.



## Common Pitfalls *(continued)*

### 7. Refusal to use health insurance.

- Use your health insurance coverage instead of letting the bills go to collections.

### 8. Spoliation of evidence.

- For example, injuries may be captured on video. You need to proactively notify any business with surveillance video to make sure to preserve any relevant video.
- Big trucks have a black box, much like airplanes. Preserving the information in these boxes can be critical to your claim.
- Similarly, truckers must maintain detailed travel logs. Since truckers are only allowed to drive a limited number of hours in a day, obtaining these logs can be critical to showing additional damages in your claim.
- Even torn clothing and other personal items may be important in proving how your injury happened.
- Many people don't realize that if your headlights are on during a crash, that the filaments will bend a different way than if the headlights were not on. This information is critical if there is a dispute about whether you had your lights on.
- Likewise, if your airbags fail to properly deploy — or if they cause additional unintended injury — a claim against the manufacturer typically requires access to the vehicle in its damaged state.

### 9. Failure to recognize potential additional claims.

- For example, there may be a product liability claim for defective airbags or a medical malpractice claim.

### 10. Not having a credible threat of litigation.

- Insurance companies may low-ball if they are not convinced you will see the case through.

### 11. Signing the wrong documents.

- For instance, some carriers have something called a “Scheduled Release” that has you sign away your rights to pursue the claim in exchange for a fairly small sum of money.
- Also, some releases supposedly for “property damage” may, in fact, preclude you from making an injury claim.
- Moreover, if you do happen to settle for policy limits, a “General Release” for the liability carrier will void your chance to pursue other potential coverages, such as UIM.

### 12. Not having an attorney in a case when there's insufficient coverage.

- A qualified attorney may be able to help put more money in your pocket even when funds are limited.

### 13. Not being educated about subrogation and lien claims.

- Many health insurance plans require that you reimburse them from your settlement — even if that means you are left with no money for what you've gone through.
- Government-sponsored plans generally have statutory rights of recovery from your injury settlement. Failure to handle these properly can result in criminal charges.



STOCK PHOTOS

# SPECIAL RULES FOR TRUCKING CASES

North Carolina has over 78,000 miles of roadways. In fact, Texas is the only state that maintains more highway mileage than North Carolina. Multiple high-traffic interstates crisscross the state, including I-95, I-77, I-85, and of course I-40, which runs the length of North Carolina. All of these interstates, and many of the state's other roads, are trucking routes. With the thriving business community in our state, and our location at the center of the Atlantic coastal states, trucks are used by local and out-of-state businesses.

## Helpful Resources

[www.nhtsa.gov](http://www.nhtsa.gov) (National Highway Traffic Safety Administration)

[www.ncdot.org](http://www.ncdot.org) (North Carolina Department of Transportation)

[www.ncdot.org/dmv](http://www.ncdot.org/dmv) (North Carolina Division of Motor Vehicles)

[www.nccrimecontrol.org](http://www.nccrimecontrol.org) (North Carolina Crime Control & Public Safety/Highway Patrol)

[www.trucksafety.org](http://www.trucksafety.org) (Trucking Safety Coalition)

[www.nts.gov](http://www.nts.gov) (National Transportation Safety Board)

[www.cvs.org](http://www.cvs.org) (Commercial Vehicle Safety Alliance)

[www.carolinatruckingacademy.com](http://www.carolinatruckingacademy.com) (North Carolina Truck Driving School)

[www.nctrucking.com](http://www.nctrucking.com) (North Carolina Trucking Association)

[www.ncleg.net](http://www.ncleg.net) (homepage of the North Carolina General Assembly)

## Special Rules for Trucking Cases

According to the National Highway Traffic Safety Administration, in 2017, 1,412 residents of North Carolina were killed in traffic incidents. Of those, 147 were killed in incidents involving “large” trucks. **North Carolina typically ranks higher than the national average in highway deaths and deaths due to collisions with commercial vehicles.**

Commercial trucks of all sizes tend to be both larger and heavier than passenger automobiles. As a result, a small miscalculation that a driver of a car might be able to correct can lead to disaster when the same mistake is made by someone driving a commercial vehicle. Therefore, the drivers of commercial trucks are required to have special licensing and adhere to higher standards of care than are everyday drivers. Sadly, many commercial drivers and the companies that employ them do not always follow the rules, and their failures can lead to catastrophic injuries and death. Even a large passenger SUV has little chance of withstanding a full collision with a fully loaded tractor trailer.

Commercial vehicles are heavily regulated, but companies and drivers can misunderstand the law, and some may even simply ignore it. **Critical documents, such as drivers' log books, which are supposed to be retained for months or years, are often destroyed within days of a collision, sometimes intentionally.** Many commercial vehicles have electronic data modules, a “black box” just like on an airplane, but the data on the box can be damaged or erased if not accessed immediately by someone qualified to retrieve the information without altering it.

In fact, so many tractor trailers and other commercial vehicles use North Carolina's highways, and so many of those trucks do not always follow the law as required, that the Highway Patrol has its own special unit dedicated to policing commercial vehicles, called the Motor Carrier Unit. In 2017 alone, the Motor Carrier unit of the North Carolina Highway Patrol issued nearly 12,000 citations and warnings to commercial vehicles for various violations.

## Commercial Vehicles

Commercial vehicles are typically defined by their Gross Vehicle Weight Rating, which you may have seen or heard referred to as “GVWR.” This rating is applied by the vehicle's manufacturer and is based on the maximum total combined weight of cargo, people, fuel, and other fluids, and the vehicle itself. You may have also heard of two different GVWR weights for being important to determine whether a vehicle is controlled by commercial regulations. The two critical weights are 10,001 pounds, and 26,001 pounds.

If a vehicle has a GVWR of 10,001 pounds or more and is used as part of a business, whether for-profit or nonprofit, and it is used across state lines, then that vehicle is considered to be a commercial motor vehicle for purposes of most safety regulations. If the vehicle crosses state lines, it must also have a U.S. Department of Transportation number displayed on the power unit (typically the tractor). It's important to note that this weight limit applies to both single vehicles, like a moving van or truck, and to combinations of vehicles, like a truck pulling a trailer or other piece of equipment. It can be difficult for the average person to determine whether some vehicles are or aren't commercial vehicles. Even if the vehicle meets the GVWR, it still has to be used in interstate commerce for some business purpose, which may not be readily apparent at an accident scene or even in a police report. It is, therefore, important to get legal advice on what sort of claims you may have in such an instance. If a vehicle or combination of vehicles has a GVWR of 26,001 pounds or more, then additional



requirements will apply, including the need for its operator to maintain a commercial driver’s license. Drug and alcohol testing may also be imposed on operators of such vehicles involved in certain accidents.

Vehicles that carry hazardous materials are considered commercial vehicles subject to additional regulation regardless of their GVWR. This is also true of certain passenger vehicles, typically those that carry large numbers of passengers. Commercial drivers are subject to laws requiring that they not drive more than 60 hours in a 7-day period or more than 70 hours in an 8-day period. However, these numbers are often exceeded, and even the drivers’ logbooks may not present the full picture of how much time a driver has been on the road. That’s why more detailed and thorough investigations are often required.

**Within North Carolina, both interstate and intrastate (carriers operating in North Carolina alone, not crossing state lines) are required to maintain minimum insurance limits of \$750,000. However, some carriers may have less than that if they are not complying with regulations. Other carriers may have more, or may have parent companies that bear some responsibility for the actions of their drivers. Such information is rarely discovered except with the help of an attorney.**

**According to the North Carolina Highway Patrol, the most commonly violated safety regulations for commercial vehicles include:** not having medical exam certifications for drivers; not keeping annual mechanical inspections up to date; drivers exceeding their hours-of-service (maximum hours of driving time) limits; no brake lights, tail lights, or turn signals; and having slick tires. These are just a few of the more common violations for which the Motor Carrier Unit regularly cites commercial vehicles.

## Important Regulations

North Carolina has adopted many of the same regulations imposed by the federal government for improving the safety of commercial vehicles. Such regulations are found in federal law under Title 49, Sections 350-399 of the *Code of Federal Regulations*. Overall, North Carolina has adopted Title 49, Parts 382-384, as well as Title 49, Parts 390-399.

Under the *Code of Federal Regulations*, commercial drivers are required to use “extreme caution” when encountering hazardous road conditions:

- Extreme caution in the operation of a commercial motor vehicle shall be exercised when hazardous conditions, such as those caused by snow, ice, sleet, fog, mist,

rain, dust, or smoke, adversely affect visibility or traction. Speed shall be reduced when such conditions exist. If conditions become sufficiently dangerous, the operation of the commercial motor vehicle shall be discontinued and shall not be resumed until the commercial motor vehicle can be safely operated. Whenever compliance with the foregoing provisions of this rule increases hazard to passengers, the commercial motor vehicle may be operated to the nearest point at which the safety of passengers is assured. (49 C.F.R. § 392.14).



In a front page story from the *Chattanooga Times Free Press*, a study performed by the American Trucking Association found that nearly 25% of the association’s members had problems with sleep apnea, which can lead to increased tiredness and inability to focus during the day. Such conditions likely violate 49 C.F.R. § 392.3, which regulate operation of commercial vehicles while ill or fatigued:

- No driver shall operate a commercial motor vehicle, and a motor carrier shall not require or permit a driver to operate a commercial motor vehicle, while the driver’s ability or alertness is so impaired, or so likely to become impaired, through fatigue, illness, or any other cause, as to make it unsafe for him/her to begin or continue to operate the commercial motor vehicle. However, in a case of grave emergency where the hazard to occupants of the commercial motor vehicle or other users of the highway would be increased by compliance with this section, the driver may continue to operate the commercial motor vehicle to the nearest place at which that hazard is removed.

Under North Carolina law, a driver as young as 21 years of age may qualify for a commercial drivers’ license, including a license to haul hazardous materials.

## Proving Your Case

The law requires you to prove your case, even when the other driver is at fault. If the documents and information referred to above are destroyed, and if witness contact information is lost, then protecting your rights may come down to requiring a truck driver to turn over receipts for fuel, lodging, and meals, just to establish how many hours he’d been on the road and whether he was on a restricted stretch of highway when he shouldn’t have been. Such evidence can disappear within days or even hours if not requested immediately.

# PREMISES LIABILITY

Premises liability holds property owners responsible for the safety of their property. As such, property owners and possessors of the premises may be held liable for injuries that people sustain while on their property. Premises liability claims can be filed for any number of reasons. **The most common examples of these types of claims include slip and fall injuries, dog bite cases, unsafe buildings, and criminal assaults.**

## Lawful Visitor or Trespasser?

The first question that needs to be considered in these claims is whether the injured party is a lawful visitor or a trespasser:

**A lawful visitor** is one who goes upon the premises in response to an express or implied invitation by the owner or possessor of the premises or who goes upon the premises solely for his own interest, convenience, or gratification but with the consent of the owner or possessor of the premises.

Nelson v. Freeland, 349 N.C. 615 (1998)

**A trespasser** is one who goes on the premises without consent or permission, express or implied, of the owner or possessor and has no right to be there.

Bell v. Page, 271 N.C. 396 (1967)

### **A lawful visitor will be required to establish that:**

1. The owner or possessor of the premises failed to keep the premises in a reasonably safe condition for lawful visitors who are using the premises in a reasonable and ordinary manner and/or warn the plaintiff of hidden dangers or unsafe conditions of which the owner or possessor had knowledge, either express or implied.
  2. The owner or possessor's negligence proximately caused the plaintiff's injury.
- Norwood v. Sherwin Williams Co., 303 N.C. 462 (1981)

### **A trespasser, on the other hand, will be required to prove that:**

1. The owner or possessor failed to refrain from willful or wanton conduct.
2. The owner or possessor's willful or wanton conduct proximately caused the plaintiff's injury.

North Carolina does not follow the law of strict liability in premises liability cases. What that basically means is, the fact that you may have been injured on someone else's property does not automatically allow you to receive compensation for your injuries. In order to get compensated for those injuries, you generally need to prove that the property owner or property manager was aware of a hazardous condition, failed to take reasonable steps to remedy the hazardous condition, and that the failure to do so resulted in your injury. Thus, it is important in premises liability cases to quickly investigate the facts and circumstances surrounding the incident.





# DWI VICTIMS' RIGHTS

You should know that state law may allow you to recover your medical expenses, lost wages, compensation for pain and suffering, and perhaps even punitive damages when you have been injured by a drunk driver. All negligent behavior can have significant consequences, especially when the behavior causes personal injury, serious harm, or death. Some behaviors, though, are viewed differently by the state and can give rise to special rights for the injured.

## DWI Victims' Rights

**According to Mothers Against Drunk Driving (MADD), over 80,000 DWI arrests are made in North Carolina each year.** Victims of car accidents that involve “willful or wanton conduct,” such as drunk driving, may be entitled to seek punitive damages in their car accident cases. The state of North Carolina specifically admonishes against drunk driving and allows the potential of punitive damages as a means of deterring drunk driving. Of course, punitive damages may apply in situations other than drunk driving if the conduct of the at-fault individual was sufficiently egregious.

Typically, in order to make a punitive damages claim, you will need to show that the liable party was convicted of a DWI. This means it is important that you appear in the criminal proceedings whenever the defendant has a court date. At the very least, you should stay in close touch with the victim and witness coordinator in the prosecuting district attorney's office.

N.C.G.S. § 1D-15 includes “Willful or wanton conduct” as aggravating factors that can be used to obtain punitive damages.

## Punitive Damages

Punitive damages are monetary damages awarded by the court that exceed the actual losses of the plaintiff. Punitive damages may be awarded to punish a defendant for egregiously wrongful acts and to deter the defendant and others from committing similar wrongful acts.

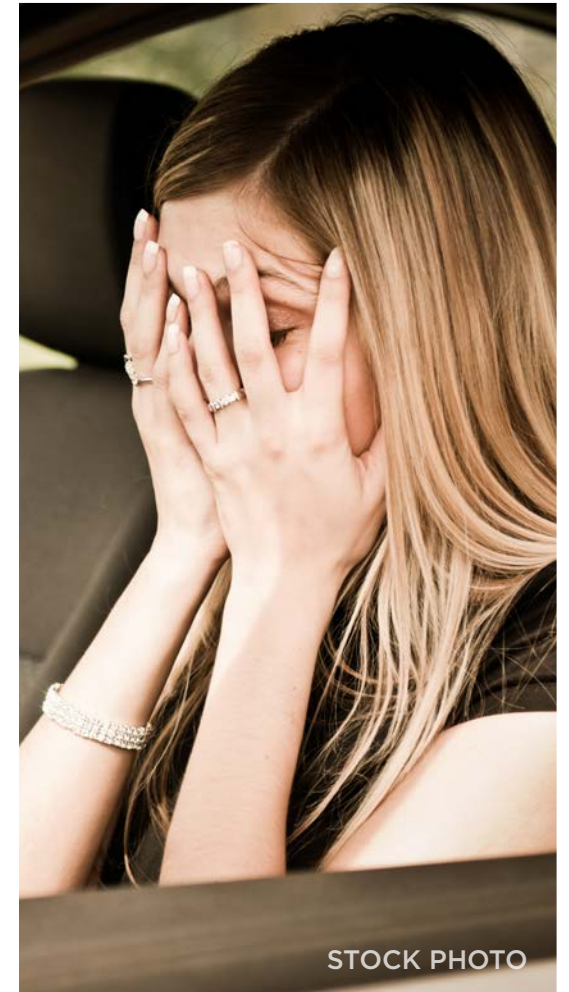
A good example of the type of egregious act leading to punitive damages is drunk driving. The argument supporting punitive damages is that people who drink and drive

show an intentional or reckless disregard for the rights and safety of others. Punitive damages awarded in such cases are meant to punish the drunk driver and to deter other people from driving while impaired. **In other words, drunk drivers are responsible not only for the compensatory injuries they have caused, but also potentially for punitive damages to punish them for their egregious conduct.**

**According to North Carolina law, the standards for recovery of punitive damages are as follows:**

1. Punitive damages may be awarded only if the defendant is liable for compensatory damages and if one of the following aggravating factors was present and was related to the injury for which compensatory damages were awarded:
  - Fraud
  - Malice
  - Willful or wanton conduct
2. The claimant must prove the existence of an aggravating factor by clear and convincing evidence.
3. Punitive damages shall not be awarded against a person solely on the basis of vicarious liability for the acts or omissions of another. Punitive damages may be awarded against a person only if that person participated in the conduct constituting the aggravating factor giving rise to the punitive damages, or if, in the case of a corporation, the officers, directors, or managers of the corporation participated in or condoned the conduct constituting the aggravating factor giving rise to punitive damages.
4. Punitive damages shall not be awarded against a person solely for breach of contract.

There is, however, a limitation to the amount of punitive damage recovery possible in most cases. In claims seeking punitive damages, the jury determines the amount of punitive damages separately from all other damages. Punitive damages are not



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## Punitive Damages *(continued)*

allowed to exceed three times the amount of compensatory damages or \$250,000, whichever is greater. If a jury returns a verdict for punitive damages in excess of the maximum amount, the court will reduce the award and enter a judgment in the maximum amount allowed by law. Drunk driving cases are an exception to that rule. The cap does not apply to a claim for punitive damages for injury or harm arising from a defendant's operation of a motor vehicle while impaired.

**North Carolina law further states that in determining the amount of punitive damages to be awarded, the jury:**

1. Shall consider the purposes of punitive damages; and
2. May consider only that evidence that relates to the following:
  - The reprehensibility of the defendant's motives and conduct.
  - The likelihood, at the relevant time, of serious harm.
  - The degree of the defendant's awareness of the probable consequences of its conduct.
  - The duration of the defendant's conduct.
  - The actual damages suffered by the claimant.
  - Any concealment by the defendant of the facts or consequences of its conduct.
  - The existence and frequency of any similar past conduct by the defendant.
  - Whether the defendant profited from the conduct.
  - The defendant's ability to pay punitive damages, as evidenced by its revenues or net worth.





# TYPES OF INJURIES

*Serious injuries require serious precautions. Are you properly prepared?*

## Types of Injuries

### 1. Head Injury

If you have been in an automobile accident or other type of accident, you may have suffered a head injury. Head injuries usually occur from some type of direct trauma, such as physical impact. In automobile accidents, a person's head can strike a window, door frame, car roof, or other hard surface.

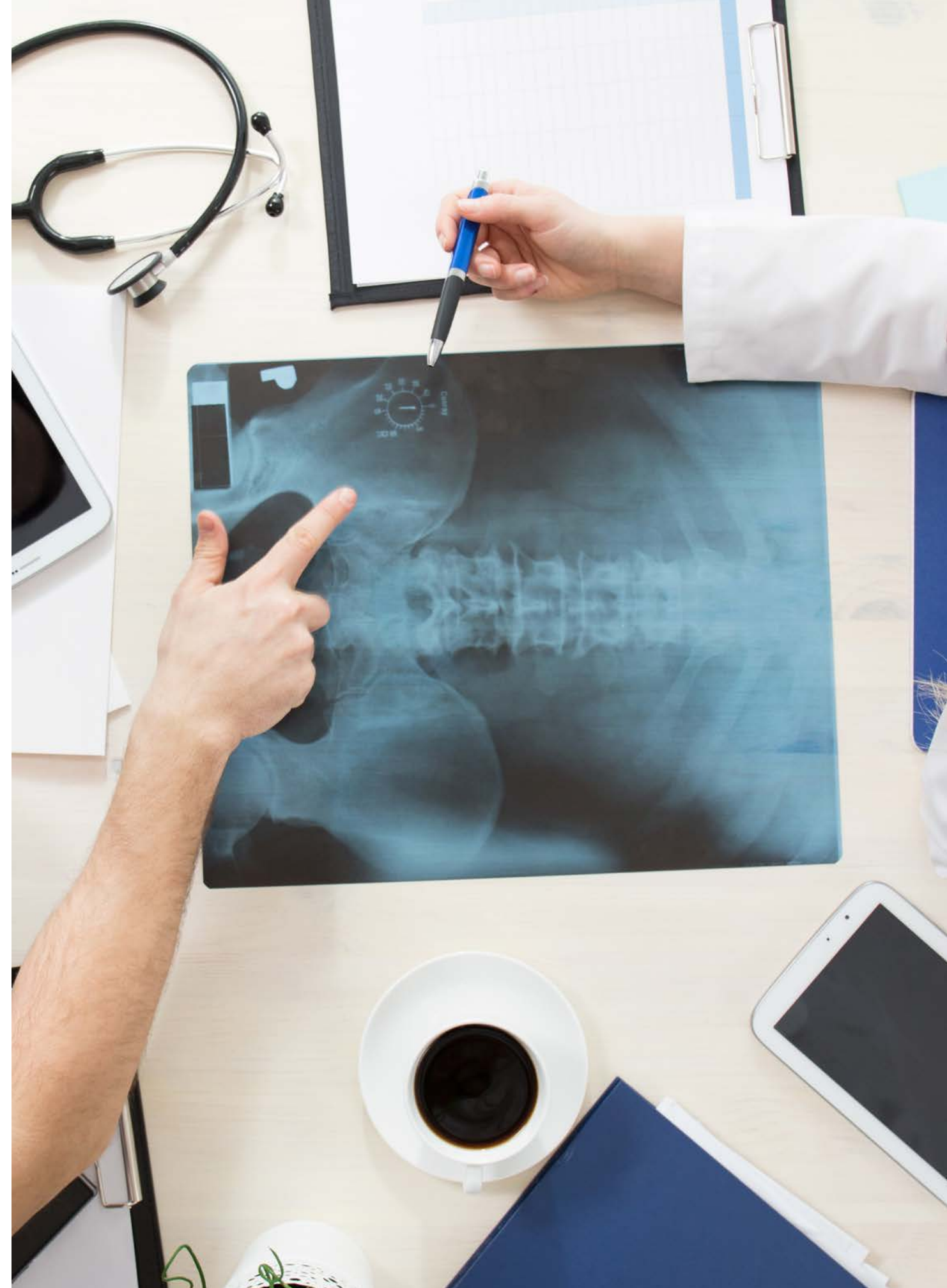
Head injuries can be minor, such as bruises and contusions, or major, such as serious concussions, subdural hematomas, fractures, and injuries (penetrating or other) to the brain and skull. Some head injuries are not visible. Injuries inside the head are called "closed head injuries" and are injuries to the brain or tissues within the skull, not caused by penetration by an object. These injuries can be hard to diagnose. They can range from bruising and bleeding (often referred to as "hematomas") to critical brain injuries. Undetected and untreated closed head injuries can result in serious issues like loss of cognitive function, loss of memory, paralysis, other significant malfunction of the body's systems, or even death.

Treatments for head injuries range from bandages and medicines to therapy and surgery. It is important to carefully observe a person suffering from a head impact or injury in the hours following an accident and to seek immediate care if there is any concern.

### 2. Back Pain & Injury

Back pain can result from injuries suffered in automobile accidents or other types of accidents. Back injuries can be caused by direct trauma, but are most often caused in automobile accidents by the forces on, and movement of, your neck and back in the collision. "Whiplash" is a common term for a force-related injury to the neck and upper back when they are injured from the hard whip-like action caused by a collision. Having your neck turned or tilted as an accident occurs can exacerbate this type of injury.

Your back has three regions known by the names of the vertebra (back bones) in that region. Those regions are cervical (the neck area), thoracic (the mid-back area), and the lumbar (lower back area). Different tests and exams can be used to check your back for injuries, including: feeling the tissues, range of motion tests, x-rays (which



show the bones and their alignment), CT scans, and MRIs (Magnetic Resonance Imaging films which show your bones, ligaments, and muscle tissues). Symptoms of back pain can range from occasional dull aches to sharp shooting pain (under certain circumstances referred to as sciatica and radiculopathy) to worse.

Treatments for back pain can range from use of cold and heat to pain medications and anti-inflammatories to chiropractic care, physical therapy, use of TENS units, surgeries that remove parts of the disc (known as laminectomies and discectomies), fusing part of the spine (known as fusions — using metal plates and bone to bind vertebrae together), and even implanting nerve stimulators.

### 3. Spinal Cord Injury

Spinal cord injuries can result from serious automobile wrecks and other accidents. The spinal cord is the major bundle of nerves running down the middle of your spine (the back bones or vertebrae supporting the skull, chest, and limbs). The spinal cord and brain form the body's central nervous system.

Injuries to the spine can include bruising and impingement, to partial or complete severing of the spinal cord. A full severing of the cord will cause complete loss of function of the nerves and most of the related systems below the cut. Nerves control and allow functioning of all the body's muscles and organs, and the spinal cord connects all of these to the brain. Injuries to the spinal cord can result in tingling, numbness, complete loss of feeling, and loss of control and/or function of important body parts and organs.

Like the back, the spine is defined by regions of the bones of the back. Those regions are cervical (the neck area), thoracic (the mid-back area), and the lumbar (lower back area). The bones, muscles, and ligaments of the spinal column are designed to protect and support the spine, which runs down through those bones and tissues.

Treatment for spinal injuries involves relieving pressure on the spine, protecting the uninjured tissues, and certain therapies to regenerate or repair injured spinal tissues. The cost of treatment and care for victims of serious spinal injuries can be very high. These injuries can be catastrophic and have a very detrimental effect on a person's life and livelihood.

### 4. Back Pain & Injury

A "fracture" is a cracked or broken bone. Damage to the bone can range from a hairline crack in the outer structure to a complete break, meaning two or more parts of

the bone no longer align correctly. A fracture that occurs during an accident can often be accompanied by other injuries such as a sprain, strain, or dislocation.

A number of things may indicate a fracture injury, including an audible pop or snap, pain which increases with movement or pressure, swelling and bruising, bending of a limb where there is no joint, or visible protrusion of a bone through the limb.

A doctor may set, cast, or splint a broken bone to help it heal. Severe fractures may require surgery. It can often take months for a fracture to fully heal. Recovery time is determined by a number of factors, including personal health, severity of the injury, and whether other injuries accompany the fracture.

Accidents may cause fracture injuries that affect your work and everyday life. When a fracture injury is suffered as a result of another person's negligence, an attorney can assist the victim in seeking damages from the at-fault party.

### 5. Scars

When a person is injured in an automobile accident or other accident, they often suffer wounds that can lead to scars. Many minor wounds can heal almost completely, but more serious wounds can leave significant scars. Scarring can be determined by a number of factors including: location, depth and size of the wound, and personal characteristics (such as age, skin color and characteristics, and heredity). Serious wounds and the related scarring can often take a good while to heal and stabilize. Medications, therapy, and surgery can be used to treat wounds as they heal and to treat the related scars.

Massive injuries resulting from burns or other causes can leave serious scars. Keloid scars (overgrowth of scar tissue), hypertrophic scars (reddening and thickening of the





scar site), and contracture scars (a permanent tightening of the skin that can affect feel, look, and use) can often require serious therapy or surgery — sometimes multiple surgeries — to restore the skin. No serious wound scar can be healed 100%.

Often, it is a good idea to consult a plastic surgeon to determine the nature of the scar and what options can be considered to correct the scarring. Considerations of the visible effect and work-related impact of scars, the need for treatments and estimates of any services for future needs, and the costs of actual services performed are part of the damages a person is entitled to recover when injured and scarred through the negligence of another.

6. Traumatic Brain Injury (TBI)

The Brain Injury Association of America website defines a traumatic brain injury (or TBI) as “a blow or jolt to the head or a penetrating head injury that disrupts the function of the brain.”

TBIs can have far-ranging implications for their victims — physically, mentally, and emotionally. As the site explains, “The severity of such an injury may range from ‘mild,’ i.e., a brief change in mental status or consciousness to ‘severe,’ i.e., an extended period of unconsciousness or amnesia after the injury. A TBI can result in short- or long-term problems with independent function.”

**A person does not have to sustain a tremendous personal injury to suffer a TBI. The single leading cause of TBI is simple falls, but a study by the National Institutes of Health suggests that collisions involving motor vehicles, motorcycles, and bicycles may account for as many as half of all TBIs.**

One of the more daunting issues with a TBI is that the injured person often has little or no idea anything is wrong. Some TBIs, especially those affecting the front lobe of the brain, can affect self-perception and awareness. Therefore, the person in question may have suffered significant changes to their physical abilities, emotional stability, or mental acuity, and not even know it unless a close friend or family member is able

to recognize the change and have the person get treatment.

Brain injuries can also affect the ability of someone to return to their employment or to be retrained for a new job. They are often, although certainly not always, accompanied by significant physical injuries that may also impede someone from

*Always Use Your Health Insurance For Serious Injury Treatment.*

returning to his or her job. Even if they can return, a brain injury may hamper their ability to remember knowledge and experience from work they have done for years. Such types of TBIs are often complicated by injuries to the area of the brain that allows a person to learn, process, and retain new information. Essentially, the brain is like a file cabinet, but the victim may not be able to open the drawer to take out old files or to put in new ones.

Obviously, such injuries can be extremely frustrating emotionally. Victims, even with counseling, often have a difficult time coping with their injury once they understand what is happening. Some victims are left with severe disabilities that not only affect them but can affect their family’s entire way of life.

Subtle changes in behavior can indicate a significant brain injury, and even a “mild” TBI can be a life-altering event. If you or a family member have sustained a head injury, you should consult your doctors about changes in mood, behavior, concentration, memory, or any other significant aspect of your life.

Life Care Plans

Under some circumstances, your injuries may be so severe that you need a life care plan. Many people have never heard of, nor had to think about, a life care plan.

Typically these plans are used only in cases where the victim has suffered a catastrophic injury, such as brain damage, amputation, or paralysis, or where they are left with a chronic condition, such as blood clotting or diabetes, which will affect them for the rest of their lives.

**A life care plan is precisely what it sounds like: a plan to take care of someone for the rest of his or her life. A good life care plan is not just a few sheets of paper; rather, it is a truly comprehensive plan that allows for changes in condition over a person’s life.**

Life care plans are typically developed by professionals who have special training, skill, and experience dealing with these plans. Often, a life care plan will need to focus on many different disciplines and areas of need, so they can be quite complex. For example, someone who has suffered an injury so severe that he or she requires a leg amputation will obviously need orthopedic care, as well as prosthetics to replace the leg. This could go on over a lifetime. However, that person may also suffer from emotional or mental trauma due to the pain and suffering of that leg loss, and may

## Life Care Plans *(continued)*

require occasional counseling to deal with that problem. Physical therapy seems like an obvious need as well. If the person was a professional driver or worked in some other area where both legs were needed, he or she may also need occupational therapy or even full job-retraining, as well as financial assistance. Home remodeling may be required to accommodate a wheelchair, or a special van which can be operated with only one leg. The services of an accountant may be needed over time to ensure the amount of money recovered is being properly managed by the client to help the money last as long as needed. Each life care plan is as different and special as the individual for whom it is designed.

Life care planners have wide-ranging backgrounds, and different experts are good for different cases. Nursing, economics, and medicine are common backgrounds for life care planners. Some also may have a background in psychology. The life care plan has to try and forecast the future, so it can be somewhat speculative by its very nature. However, such speculation is necessary when trying to decide how a person's physical, emotional, and mental needs may change over a lifetime. The most complete and long-term life care plans often require a very significant amount of funding.

**We have provided some links below to websites dealing with topics often addressed by life care plans.**

### Helpful Resources

[www.bianc.net](http://www.bianc.net) (*Brain Injury Association of North Carolina*)

[www.naric.com](http://www.naric.com) (*National Rehabilitation Information Center*)

[www.amputee-coalition.org](http://www.amputee-coalition.org) (*Amputee Coalition of America*)

[www.biausa.org](http://www.biausa.org) (*Brain Injury Association of America*)





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*\*Disclaimer: Prior results do not guarantee similar outcomes in future cases because each case is unique and must be evaluated separately. This is not intended to serve as legal or medical advice specific to your situation.*

*\*\*In re Black Farmers Discrimination Litigation, the Law Offices of James Scott Farrin led a team of firms to recover \$1.25 billion from the U.S. government for discrimination against African-American farmers.*

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