

Insurance and Liability: What You Need to Know if You Are Injured in an Automobile Accident

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It's an unfortunate fact, but each year over 100,000 people are injured in automobile accidents in North Carolina, and statistics suggest that nearly every driver will be involved in at least one automobile accident during their lifetime. When an accident happens, injured individuals must understand their legal rights. The goal of this article is to provide a basic overview of the legal process for those who are injured in an automobile accident due to someone else's fault.

The Role of Automobile Insurance

North Carolina law requires that the owner of a registered motor vehicle maintain basic levels of liability insurance coverage. The purpose of liability coverage is to pay for claims when the owner or driver of the vehicle is "liable" for an accident—i.e., when an accident is that owner's or driver's fault. The minimum requirements for coverage in North Carolina are \$30,000 for bodily injury to one person, \$60,000 for bodily injury to two or more people, and \$25,000 for property damage.

Of course, many individuals carry additional coverage beyond these limits, or for additional types of situations. Many automobile liability insurance policies also include Underinsured Motorist Coverage ("UIM") or Uninsured Motorist Coverage ("UM"). UIM coverage applies when the insured owner or driver is injured by the driver of another motor vehicle without insurance coverage sufficient to fully compensate for all resulting injuries. UM coverage applies if the insured owner or driver is injured by a driver who was driving (illegally) without any insurance coverage at all. Thus, in these situations, the injured party is compensated under their own personal insurance policy in addition to, or in lieu of, the insufficient or the nonexistent policy of the person at fault.

In addition, when there is no coverage, or insufficient insurance coverage, the at-fault driver can then be held personally liable for all or the remaining amount of damages resulting from the injuries. Or, if the driver was driving within the scope of the driver's employment, the driver's employer could also be held liable.

Is the Other Party Liable for Your Injuries?

In order for the other owner or driver (or their insurance company) to be responsible to pay you for your injuries, they must be legally liable for those injuries. Simply put, the accident must have been their fault, and the injuries in question must have been caused by the accident. In legal terms, this means that the at-fault driver was at least "negligent" and the negligence "proximately caused" your injuries.

Sometimes an accident can be more than one driver's fault. North Carolina is one of only a few states that

continue to recognize the doctrine of "contributory negligence." That means that if you negligently contribute to an accident in North Carolina to the slightest extent—even 1%—you cannot recover at all from the other driver—even if that other driver was 99% at fault. There are exceptions to this rule, such as the doctrine of "last clear chance," or possibly where the other driver is "grossly negligent," but those exceptions are somewhat rare.

The Elements of Damages

As the injured driver, you will be able to recover all damages "proximately caused" by the at-fault driver's negligence. Proximate cause is a legal term which means "a cause which in a natural and continuous sequence produces a person's injury."

The aim of awarding damages is to make you "whole" under the law. When dealing with serious personal injuries or death, this, of course, is a legal fiction. No amount of money can ever compensate someone for injury or death. Still, the only mechanism the civil legal system has to compensate an injured party is through the payment of money. So, although it can sometimes even seem distasteful, the payment of money is how the law compensates for bodily injury and death and seeks to "balance the harm" incurred. The negligent driver (or the owner of the car driven by the at-fault driver) is the one responsible for paying your damages. If the owner or driver of the other car has liability insurance, that insurance company will pay. If they do not have sufficient coverage (or lack insurance coverage altogether), your own UIM or UM coverage will pay your damages.

The at-fault driver will also be liable for any property damage to your vehicle or its contents. This includes repair costs if your vehicle can be fixed and, in some cases, compensation for "diminution in value." If the vehicle or other property (say, a valuable heirloom that you were carrying in your trunk) cannot be repaired (i.e., is "totaled"), you will be entitled to its replacement value limited to its fair market value at the time it was destroyed.

Regarding personal injuries, you may be entitled to multiple types of damages. First, you will be entitled to any medical costs. Your total recoverable medical costs are any amounts that were actually paid by you or someone on your behalf (including your health insurance), as well as any medical bills that are still outstanding. Do not believe that you can't recover amounts your health insurance paid on your behalf—you can; however, your health insurance carrier may be able to recover from you some of what it paid on your behalf.

You will also be entitled to any future medical costs you can prove will be associated with your care. If you will require medical treatment in the future, a reasonable estimate of these costs is an element of your damages you will be required to prove.

There are several other types of damages that may be available to you. For instance, you may be entitled to lost wages from not being able to work and a claim for diminished future earning capacity due to ongoing health problems.

There also are non-economic damages meant to compensate you for your pain and suffering, scarring or disfigurement, loss of use of part of your body, or the permanency associated with any continuing injuries. Again, money cannot fix these situations. Still, it is up to the parties, a judge, or a jury to determine a reasonable amount of compensation for these damages based on the specific facts of your case.

Obtaining Compensation

A large number of auto injury claims settle out of court. Many individuals seek out an attorney in order to investigate their case and pursue their claim against the applicable insurance company or at-fault party. If the parties reach an acceptable settlement, the matter can be resolved without any lawsuit being filed.

If you and the other owner or driver cannot reach a resolution, however, the next step will be to file a lawsuit. Any lawsuit must be filed against the liable driver—not against their insurance company. Even though an insurance company may ultimately be responsible for the payment of the damages awarded to you in a lawsuit, North Carolina evidentiary rules prevent you from introducing evidence of insurance coverage at trial because it is thought that such evidence would distract a jury by causing it to focus on how much money might be available instead of the real legal issue—the extent to which you have been injured.

If it becomes necessary for you to file a lawsuit, the parties will engage in a discovery process during which each side investigates the specifics of the claim, any alleged defenses, and the scope of your injuries. If you still cannot settle the matter with the other side—either through informal settlement negotiations or through mediation—there will be a trial whereby a jury or a judge (typically a jury) decides your case.

This process can be incredibly complicated, involving everything from legal research and case strategy, to seeking out and utilizing medical experts. Therefore, it is advisable for anyone pursuing such a claim to consult with an experienced attorney.

Automobile accidents happen every minute of every day and come out of nowhere. Hopefully, when they occur, they are minor. But sadly, they sometimes involve serious personal injuries. While the involvement of "trial lawyers" in automobile accident cases can sometimes raise negative connotations, the fact is that reaching out to an attorney to assist with these claims is typically the best approach. Involving an experienced, committed attorney will ensure that you protect your rights and also receive guidance through a challenging, and often complex, situation.

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