

# Personal Injury Claims in North Carolina

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Written By **Lynwood P. Evans** (lpe@wardandsmith.com) and  
**Jeremy M. Wilson** (jw@wardandsmith.com)

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## Introduction

It's an unfortunate fact, but every day individuals are injured across our state in all sorts of different ways. When an accident happens, victims or their families often wonder what their rights are: Is someone legally liable? In North Carolina, as in other states, this question hinges on whether another party was "negligent" or otherwise acted wrongfully, and whether that negligence or wrongful action caused actual damages to the injured party.

## Is there Liability?—the Role of "Negligence"

Under our civil legal system, we have a duty to act with reasonable care in all of our actions. That means we all must act as a "reasonably prudent person." It's a broad concept, and what is reasonable depends on the specific situation. (Note that this duty of reasonable care is in addition to our obligation not to intentionally and willfully injure another, which obligation is beyond the scope of this topic.)

When someone fails to act with reasonable care, and their actions cause injury, that party is deemed to be negligent. Unless a legal defense applies, a negligent party is legally liable for the damages their negligence causes. Examples range from a negligent driver causing a wreck; to a company negligently producing an unsafe product; to a property owner failing to correct or warn of an unsafe condition that hurts a visitor.

Once negligence is established, the negligent party typically is liable for any damage their negligence caused. Again, there are potential defenses. For instance, North Carolina is one of only a few states that continue to recognize the doctrine of "contributory negligence." That doctrine provides that if the injured party negligently contributed to the incident in the slightest manner—even 1%—the injured party cannot recover at all. There are exceptions to this defense, such as the doctrine of "last clear chance," or possibly when the acting party is found to be not just negligent, but "grossly negligent," but those exceptions are somewhat rare.

## The Elements of Damages

Assuming negligence is proven and contributory negligence or other defenses do not apply, the next step is to determine what damages, if any, are owed as a result of the negligence and consequent injury.

The aim of awarding damages is to make the injured person "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 a serious, permanent injury or death. Still, the only mechanism our civil legal system has to compensate an injured party is through the payment of money. So, the payment of money is how the law compensates for bodily injury and death to "balance the harm" incurred. The negligent party or their insurance company, if applicable, is responsible for paying these damages.

With personal injuries, multiple types of damages may apply. First, total recoverable medical costs are any amounts actually paid by an injured person or someone on their behalf (including their health insurance), as well as any medical bills that are still outstanding. Any future medical costs associated with ongoing care also are recoverable.

There are several other types of damages. For instance, the victim may be entitled to lost wages or a claim for diminished future earning capacity due to ongoing health problems arising from the injuries sustained.

There also are non-economic damages meant to compensate for pain and suffering, scarring or disfigurement, loss of use of a body part, 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 the case.

### Conclusion

When injuries happen as a result of another party's negligence, our legal system puts responsibility for the injuries on that negligent party. So, the injured person must turn to that negligent party, or that party's insurance company, for compensation. While the involvement of "trial lawyers" in such 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, including when an insurance company becomes involved. Involving an experienced, committed attorney will ensure the protection of the injured party's rights, and that the injured party also has skilled guidance during a challenging, and often complex, legal process.

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