



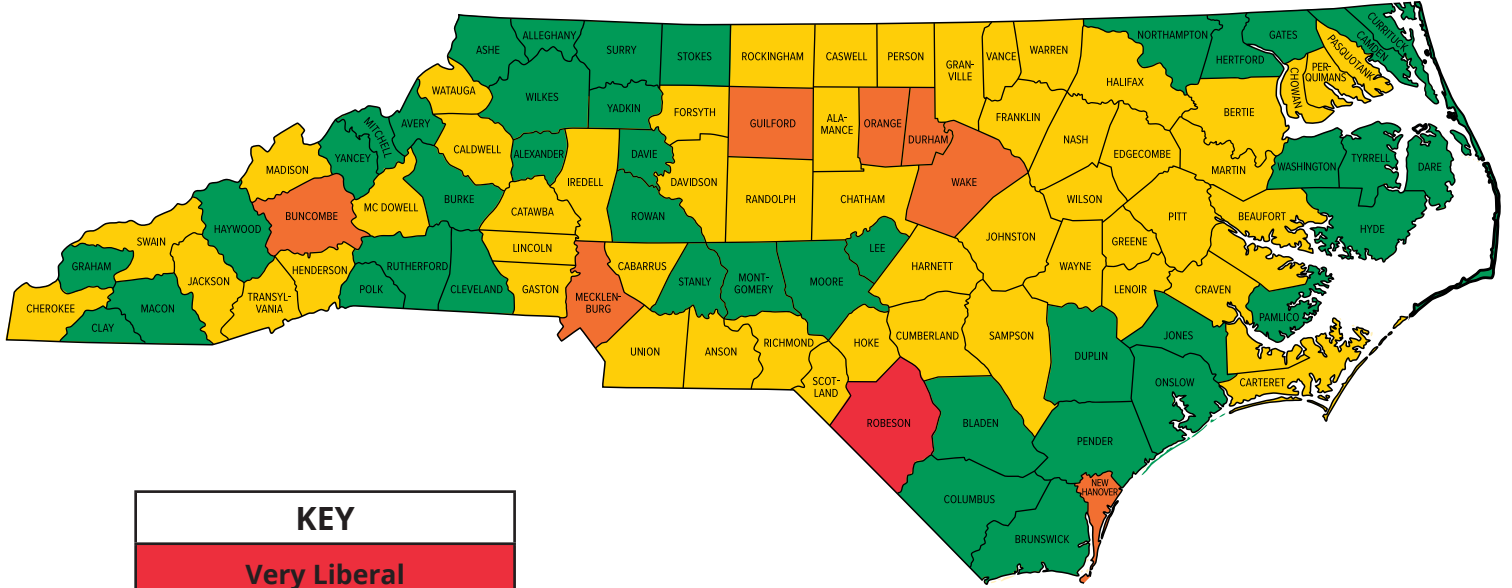
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NORTH CAROLINA CIVIL LIABILITY DEFENSE



KEY
Very Liberal
Liberal
Moderate
Conservative

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## INSURANCE

**Duty to Disclose Policy Limits:** Carrier must provide the policy limits within thirty days of receiving a written request from the claimant's attorney including claimant's medical records, consent to mediation, and the accident report or description of events relating to potential liability.

You can also provide a copy of the dec page. If the claimant's attorney does not give you enough information to provide this information, you must state in writing what additional information is needed to complete the request.

**Liability Coverage:** The mandatory minimum limits in NC are 50/100/50. Liability coverage cannot be stacked.

**Uninsured Motorist Coverage (UM):** Mandatory minimum limits are 50/100/50. Subrogation is permitted, and inter-policy stacking may be available.

**Underinsured Motorist Claim (UIM):** UIM coverage is not required by law; however, the insurer must make a "meaningful offer" up to the liability limits. If no meaningful offer is made, UIM coverage can be rolled on to the policy in the amount of the liability limits. UM and UIM coverages are mutually exclusive (unless policy allows otherwise). No subrogation is allowed for UIM claims, and inter-policy stacking may be available.

**Bad Faith:** The insurer's unreasonable refusal to settle within liability policy limits which subjects the insured to an excess verdict may constitute bad faith. The insurer's unreasonable action in processing a claim may also constitute bad faith, even if the policy ultimately provides no coverage.

## NEGLIGENCE AND LIABILITY

**Contributory Negligence:** If the Plaintiff is at least 1% negligent in his or her own injury, then the Plaintiff cannot recover anything.

**Gross Negligence:** If the Defendant's actions are willful and wanton, then a finding of gross negligence can negate any finding of contributory negligence and open the door for punitive damages.

**Last Clear Chance:** Contributorily negligent Plaintiff can still recover damages if shown: (1) Plaintiff in position of peril, (2) Defendant knew or should have known of Plaintiff's position of peril, (3) Defendant had time and ability to avoid the Plaintiff, (4) Defendant failed to avoid the Plaintiff, and (5) Plaintiff was injured.

**Negligence of Minor:** A minor's conduct is judged by the standard of behavior to be expected of a child of like age, intelligence, and experience under like circumstances. A minor under the age of seven years old is incapable of negligence.

**Statutory Violation:** When a defendant violates a duty that arises from a statute, ordinance, or regulation, the defendant is negligent per se (negligent as a matter of law). This can constitute evidence of recklessness or willful and wanton conduct, which could give rise to a claim for punitive damages.

**Punitive Damages:** Generally, punitive damages are limited to the greater of \$250,000 or three times the amount of compensatory damages. May not be awarded solely on the basis of vicarious liability. Punitive damages are covered by an automobile insurance policy in an amount at least up to the minimum limits, regardless of whether the claim involves liability, UM, or UIM coverage.

**Seat Belt:** Evidence that the Plaintiff was not wearing a seat belt is not admissible at trial.

**Post-Judgment Interest:** For contract claims, a party can assert post-judgment interest from the date judgment is entered until it is satisfied. All other claims allow a party to assert pre-judgment interest calculated from the date the Complaint is filed.

**Joint and Several Liability:** Plaintiff can recover all damages from any party whose negligence was a proximate cause of the damages.

**Contribution among Joint Tortfeasors:** The right of contribution is limited to recovery of amounts paid by a tortfeasor in excess of its pro rata share of the common liability, which is determined without consideration of relative degrees of fault. The liability of a joint tortfeasor for all contribution is extinguished when the joint tortfeasor receives a release or covenant in good faith. In state court, a contribution claim is not ripe until a defendant pays more than its pro rata share. It is unclear how this Act will be interpreted in light of the new rules on joint and several liability.

## PROCEDURAL ISSUES

**Statute of Limitations:** The Statute of Limitations is generally three (3) years for negligence claims and two (2) years for wrongful death claims. The time begins to run when the Plaintiff discovered (or with reasonable efforts should have discovered) the claim.

**Answer:** A Defendant has thirty (30) days after service to serve an answer to the original Complaint in State Court and twenty-one (21) days in Federal Court. The Defendant can get one extension (30 days in State Court and 21 in Federal Court). An extension can be granted by written agreement of counsel.

**Removal to Federal Court:** Notice of Removal must be filed within thirty (30) days after notice of the lawsuit (or pleading making case removable). This time cannot be extended under any circumstances. Also, removal is not allowed after the case has been pending for one (1) year.

**Venue:** Venue lies as follows:

**Resident Defendant:** Where a Defendant resides at the time the claim arose or where the incident occurred.

**Non-Resident Defendant:** Where a Plaintiff resides at the time the claim arose or where the incident occurred.

**Domestic Defendant Corporation:** A Defendant's principal place of business at the time the claim arose or where the incident occurred.

**Non-Resident Defendant Corporation:** A Defendant's principal place of business at the time the claim arose or where the incident occurred. If the corporation does not have a Certificate of Authority on file in NC, venue is also proper where a Plaintiff resided at the time the claim arose.

**Multiple Residents and Non-Resident Defendants:** A Plaintiff can choose, so long as venue is proper for either using the above rules.

**Offers of Judgment:** Any party may make an Offer of Judgment. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred by the offeror after making the offer. Plus, if the offeror is a Plaintiff, 8% interest computed on the verdict from the date of the offer; or if the offeror is a Defendant, a reduction from the judgment of 8% interest computed on the verdict from the date of the offer.