NORTH CAROLINA

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STATE BY STATE SURVEY

1. Minimum liability limits

30/60/25

Thirty thousand dollars ($30,000) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, sixty thousand dollars ($60,000) because of bodily injury to or death of two or more persons in any one accident, and twenty-five thousand dollars ($25,000) because of injury to or destruction of property of others in any one accident. See N.C. Gen. Stat. § 20-279.21 (2015).

2. Negligence laws (Is the jurisdiction a pure contributory negligence state; what type of comparative fault is applicable, etc?)

North Carolina is a pure contributory negligence state.

3. Bodily Injury Statute of Limitations


4. Property Damage Statute of Limitations


5. Are punitive damages insurable in the jurisdiction?

Yes.
6. Is there an intrafamily immunity defense?
   No.

7. Is there a bodily injury damage threshold? If so, what is it?
   No.

8. What are the quick rules on Subrogation MP/PIP?

   **Med Pay:** Although as a general rule, subrogation clauses are not allowed in life or accident and health insurance policies in North Carolina, 11 N.C.A.C. § 12.0319, equitable subrogation rights may arise by operation of law. *In re Declaratory Ruling by North Carolina Comm’r of Ins. Regarding 11 N.C.A.C. 12.0319*, 134 N.C. App. 22, 517 S.E.2d 134 (1999). As such, the Court of Appeals has allowed Med Pay carriers to subrogate through or seek reimbursement from insured, who has legal title to the one, indivisible cause of action against the tortfeasor so long as the insurer has paid such medical expenses pursuant to a medical payments provision in the policy. *Moore v. Beacon Ins. Co.*, 54 N.C. App. 669, 284 S.E.2d 136 (1981).

   **PIP:** Coverage not applicable.

9. Are there no fault laws in the jurisdiction?
   No.

10. Is the customer’s insurance primary?

    No, a carrier is liable for a loss of goods in transit, in absence of a special contract, unless carrier can show that the loss was attributable to an act of God, the public enemy, the fault of the shipper, or to an inherent defect in the goods shipped. *Centennial Ins. Co. v. Haley Transfer and Storage*, 18 N.C. App. 152, 196 S.E.2d 822 (1973) (discussing subrogation rights of customer and customer’s insurer against transfer and storage company).

11. Is there a seat belt defense?

    No. North Carolina statutes explicitly state that the “failure to wear a seat belt shall not be admissible in any . . . civil trial, action, or proceeding[.]” N.C. Gen. Stat. § 20-135.2A(d).

12. Is there a last clear chance defense?

    Yes. If the jury finds, by the greater weight of the evidence, that the plaintiff negligently placed himself in a position of peril from which he could not escape by the exercise of reasonable care and that the defendant knew, or by the exercise of reasonable care should have discovered, the plaintiff’s position of peril and inability to escape from it; and that the defendant had the time and means to avoid injury to the plaintiff and failed to exercise reasonable care to
do so; and that such failure proximately caused the plaintiff’s injury; then the defendant had the last clear chance. N.C.P.I. Civil (MV) 105.15. Last Clear Chance

13. **Is there an assumption of risk defense?**

   Yes, but only where there is privity of contract between the parties. The doctrine of assumption of risk is not available as a defense where there is no contractual relationship between the parties. *See Clark v. Pilot Freight Carriers, Inc.*, 247 N.C. 705, 102 S.E.2d 252 (1958).

14. **Is there a UM requirement?**

   Yes. *See* N.C. Gen. Stat. 20-279.21(b)(3)-(b)(4) (requiring that all licensed drivers carry Uninsured/Underinsured (UM/UIM) motorist coverage on their motor vehicle insurance policies at least equal to the highest Bodily Injury Liability limit on any one motor vehicle insured under the policy unless the insured elects to purchase higher limits).

15. **Is there a physical contact requirement?**


16. **Is there a mandatory ADR requirement?**

   Yes. Pursuant to N.C. Gen. Stat. § 7A-38.1 and the North Carolina Supreme Court’s Rules Implementing Mediated Settlement Conferences (MSC Rules), referral to mediated settlement is mandatory for civil actions pending in superior court (unless the parties agree to participate in one of the other options available to them through the dispute resolution menu).

17. **Are agreements reached in mediation enforceable?**

   Not unless the agreement is reduced to writing and signed by the parties. N.C. Gen. Stat. § 7A-38.1.

18. **What is the standard of review for a new trial?**

   The standard of review of ruling on a motion for new trial pursuant to N.C. R. Civ. Pro. Rule 59 is whether the trial court abused its discretion in granting or denying the motion; any review of the trial court’s decision is strictly limited to a determination whether the record affirmatively demonstrates manifest abuse of discretion, or a determination that the ruling is clearly erroneous.

19. **Is pre-judgment interest collectable? If so, at what rate?**

   Yes, at 8% per annum from date suit is filed.
20. **Is post-judgment interest collectable? If so, at what rate?**

Yes, at 8% per annum.

21. **Is there a workers compensation exclusive remedy defense?**


22. **Is the doctrine of joint and several liability applicable?**

Yes. See N.C. Gen. Stat. §1B-1.

23. **Is there a self critical analysis privilege?**

North Carolina state courts have not dealt with this issue. North Carolina federal courts have not “expressly rejected” the validity of the privilege. In the employment discrimination context, however, the Fourth Circuit and North Carolina federal courts have held that the privilege does not apply where the need for probative evidence outweighs the privileged interests. *See McDougal-Wilson v. Goodyear Tire and Rubber Co.*, 232 F.R.D. 246 (E.D.N.C. 2005); *Virmani v. Novant Health Inc.*, 259 F.3d 284 (4th Cir. 2001); *Warren v. Legg Mason Wood Walker, Inc.*, 896 F.Supp. 540 (E.D.N.C. 1995).

24. **Is accident reconstruction data admissible?**

Yes.

25. **What is the rule on admissibility of medicals paid/reduced vs. total bills submitted?**

For actions arising prior to October 1, 2011, the admissibility of evidence of medical expenses is governed by the common law collateral source rule. *Nicholson v. Thom*, 763 S.E.2d 772 (2014). For actions arising on or after October 1, 2011 the following new rule governs: “Evidence offered to prove past medical expenses shall be limited to evidence of the amounts actually paid to satisfy the bills that have been satisfied…” N.C. Gen. Stat. § 8C-1, Rule 414.

26. **What is the jurisdiction’s rule on offers of judgment?**

*See N.C. R. Civ. Pro. Rule 68 – Offers of judgment and disclaimer*

Offer of judgment: Any time more than 10 days before trial begins, a party defending against a claim may make an offer of judgment. If it is not accepted, and the judgment obtained
is not more favorable than the offer, the offeree must pay the costs incurred after the making of
the offer.

Conditional offer of judgment for damages: A party defending against a claim arising in
contract or quasi contract may, with his responsive pleading, serve upon the claimant an offer in
writing that if he fails in his defense, the damages shall be assessed at a specified sum; and if the
claimant signifies his acceptance thereof in writing within 20 days of the service of such offer,
and on the trial prevails, his damages shall be assessed accordingly. If the claimant does not
accept the offer, he must prove his damages as if the offer had not been made. If the damages
assessed in the claimant’s favor do not exceed the sum stated in the offer, the party defending
shall recover costs in respect to the question of damages.

27. **What is the jurisdiction’s rule on spoliation of evidence?**

The obligation to preserve evidence may arise prior to the filing of a complaint where the
opposing party is on notice that litigation is likely to be commenced. See McLain v. Taco Bell
(2000). There is no separate claim of spoliation of evidence in North Carolina. Instead, a
party may request an instruction at trial with respect to the spoliation of evidence, if alleged.

28. **Are there damages caps in place?**

Punitive Damages Cap: Three times the amount of compensatory damages or $250,000,
whichever is greater (Exception: DWI cases, where there is no cap on punitive damages). See

Medical Malpractice Cap: Liability for noneconomic damages is capped at $500,000. See

No other damages caps are in place.

29. **Is CSA 2010 data admissible?**

This issue has not been decided in North Carolina.

30. **Briefly, does the jurisdiction have any unique rules on electronic discovery?**

Yes. The North Carolina Rules of Civil Procedure have been amended to govern the
discovery of electronically stored information and to require the preparation of privilege logs in
all state court cases filed after October 1, 2011. For the most part, the revisions bring the North
Carolina rules into closer accord with the Federal Rules of Civil Procedure. However, unlike the
federal rules, the state court rules now define “electronically stored information” to include
“reasonably accessible metadata that will enable the discovering party to have the ability to
access such information as the date sent, date received, author, and recipients.” See N.C. R. Civ.
31. **Is the sudden emergency doctrine recognized in the jurisdiction?**

Yes. If, in a moment of sudden emergency, a person makes a decision that a reasonable prudent person would make under the same or similar circumstances, he does all that the law requires, even if in hindsight, a different decision would have been better or safer. N.C.P.I.-Civil 102.15, Motor Vehicles.

32. **Are there any rules prohibiting or limiting the use of the reptile theory at trial?**

No, the reptile theory has not been addressed by North Carolina courts.

33. **What are the jurisdictional limits of the jurisdiction’s civil courts – i.e. Small Claims, District Court, Superior Court?**

Small claims: not to exceed $10,000 in controversy  
District court: not to exceed $25,000 in controversy  
Superior court: over $25,000 in controversy

34. **Are state judges elected or appointed?**

Trial court judges are elected in nonpartisan elections. Court of Appeals judges are elected in partisan elections. Supreme Court justices are elected by retention election, wherein the ballot contains a “yes” or “no” vote to retain the particular justice. The constitutionality of the Supreme Court retention election is currently being litigated.