

Over the last two weeks, our firm represented a man who lost his leg in a workplace injury. Everyone agreed the workplace was exceedingly dangerous. Worker's compensation paid for his medical bills and provided him with a modest income for a period of time.

Eventually, our client settled with his worker's compensation carrier in what is called a clincher agreement. The clincher agreement meant that they paid a lump sum of money so they would no longer have to pay for his medical care in the future or for his weekly wage. A good portion of that money had to be set aside to cover future medical costs so that Medicare would not be responsible. Because of his limited education and skills, our client receives a very small amount in Social Security Disability. He will also receive Medicare.

Our firm represented this 30-year-old man with one child and four stepchildren for more than six years. His case traveled to the North Carolina Supreme Court on one issue and to the North Carolina Court of Appeals on another. Ultimately the case was tried before a jury. The jury deliberated for three days before finding the defendant negligent but our client also contributorily negligent.

In North Carolina, there is the law of contributory negligence. The question presented to the jury did the plaintiff contribute to his own injuries. After having the court reread the instructions on contributory negligence, the jury determined that our client was contributorily negligent.

After the trial, we had the opportunity to speak with the jurors. The jurors had never heard of the concept of contributory negligence and found it horribly unfair. Nevertheless, they felt constrained to find that our client was contributorily negligent. One of the jurors even stated, "Of course he contributed... he went to work that day." In other words, just the mere fact that our client went to work, in that juror's mind, meant that he 'contributed.' As you can see, the law of North Carolina is that even though the defendant was found negligent, the taxpayers will have to provide a modest livelihood for our client instead of the negligent party.

A number of consumer-oriented organizations attempted to convince the North Carolina legislature to do away with the unjust law of contributory negligence. Unfortunately, consumers cannot stand against the owners of big business, the Chamber of Commerce and influential insurance companies.

