

Question Tree for Minor versus Non-minor Injuries

Is there a likelihood of liability?

Is there insurance or assets to realize against?

For each area of injury ask:

1. Is the injury to muscles, ligaments or tendons?
 - a. If “yes”, go to question 3. It may be a so-called “Minor Injury.”
 - b. If “no”, go to question 5.

2. Is it an injury to structures other than muscles, ligaments or tendons, such as to the brain, spinal cord, quadriplegia, paraplegia, bones, nerves, cartilage, or bursa? Is there a diagnosis of psychological injury, chronic pain, Whiplash Associated Disorder 3 or Whiplash Associated Disorder 4?
 - a. If “yes” go to question 5.

3. Does it result in “serious impairment?”
 - a. “Serious impairment” is defined as an impairment of the claimant’s physical or cognitive function that has been ongoing since the accident and is not expected to substantially improve, that results in a substantial inability to perform:
 - i. The essential tasks of the claimant’s employment despite reasonable accommodation and effort, or
 - ii. The essential tasks of the claimant’s training or education despite reasonable accommodation and effort, or
 - iii. His or her normal activities of daily living.
 - b. If the answer is “yes” to any of these, go to question 5.
 - c. If the answer “no” to all of these, go to question 4.

4. The injury is likely capped for pain and suffering damages.
 - a. Even if pain and suffering is capped, the claimant can claim full damages for other heads of damages such as Out of Pocket Expenses, Future Cost of Care, Past Loss of Income, Future Loss of Income, Loss of Housekeeping Capacity, Volunteer Services, Loss of Opportunity, etc.

5. The pain and suffering damages are likely not capped. The claimant would receive full recovery for pain and suffering, as well as the other applicable heads of damages.

Disclaimer: Each injury is unique, and depends on the medical opinions that are accepted. Injuries can move from a minor to a non-minor injury over time (for example, “chronic pain”). Specific medical and legal advice should be sought. Limitation periods apply that will bar recovery if they are not met. This Question Tree is not meant to provide legal advice on specific injuries, but is of a general nature only.