COOPER HURLEY INJURY LAWYERS

THE Traumatic Brain Injury Toolkit

EVERYTHING A CLIENT NEEDS TO KNOW
AFTER SUFFERING A ***TRAUMATIC BRAIN INJURY***

BY: JOHN M. COOPER

CO-AUTHORS:
JIM HURLEY, BILL O'MARA & GRIFFIN O'HANLON

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YOUR INJURY, OUR FIGHT!

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A NOTE FROM THE AUTHOR, JOHN M. COOPER

I have practiced personal injury law for more than thirty years in Hampton Roads, Virginia. In the past fifteen years, traumatic brain injuries (TBIs) have been given more attention in catastrophic personal injury cases. In the past, doctors and the public did not focus on TBIs as much. If the client suffered a headache or a concussion, the insurers did not treat those as significant injuries.

The wars in the Middle East and the realization of the extent of sports injuries in the NFL helped people to realize how bad concussions can be, particularly multiple concussions. Now, there is a lot more public awareness of traumatic brain injuries. The medical world now pays more attention to these injuries. Juries can understand these TBIs better, and we, as personal injury practitioners, are looking to explain these injuries to get full compensation for our clients.

In my practice, I have worked with doctors who are highly specialized in treating patients with traumatic brain injuries. They focus their practices not just on neurological issues like headaches but on neurocognitive symptoms like chronic memory problems, even from mild traumatic brain injuries (mTBIs). An mTBI and a concussion are the same thing; the terms are interchangeable. Any concussion or other head trauma resulting from a car crash is a serious traumatic brain injury even if classified as "mild." Often, the symptoms of a traumatic brain injury subside. However, in a significant

percentage of cases involving car or truck wrecks, brain injuries and the resulting symptoms are not only present for six months or more but can also have lifelong effects. Any TBI, regardless of classification, can be life-changing and devastating.

A TBI can seem like an invisible injury. You could interact with someone who has a TBI and have no idea. There's nothing to visibly differentiate a person with or without a TBI. However, in talking, working, and living with TBI survivors, the people closest to the patients can perceive the subtle, neurological differences that would otherwise go unnoticed. A TBI can majorly affect a survivor's quality of life and their ability to think, sleep, and work. This book sheds light on these invisible injuries, advising on what to look for and how you can help a loved one cope with a TBI.

This book does not constitute legal advice. Please talk to the brain injury team at Cooper Hurley Injury Lawyers if you suffered head trauma from the carelessness of another and want to know if you have a case. Our initial consultations are free, and we will give you a frank assessment of your injury and its potential legal implications.

Many thanks to David Macaulay, Charles B. Lustig, Esquire, and Leah Cooper for their work on this book, to our firm's clients for trusting us with their cases, and to the Brain Injury Association of Virginia for its support of TBI sufferers and their families.

ABOUT JOHN M. COOPER

John is a founding partner of Cooper Hurley Injury Lawyers, a specialized personal injury law firm based in Norfolk, Virginia. He has decades of experience representing those who have suffered traumatic brain injuries from auto accidents, slip and falls, and industrial accidents.

Throughout his career, Mr. Cooper has garnered a strong record of helping people with TBIs win their cases. He understands the key to a good result is getting to know the client, as an individual, to better explain their story. Insurance companies routinely discount TBIs. Despite this, John has won many millions of dollars for clients who suffered traumatic brain injuries due to the fault of others.

John Cooper grew up in Norfolk and Virginia Beach. John and his wife, Monica, have three adult children. Mr. Cooper is a graduate of the University of California, Berkeley and the University of Virginia School of Law. He has received numerous awards for his work as an injury lawyer, including an AV Rating

by Martingale-Hubbell, the highest rating given, for his practice of law. He is also rated 10 out of 10 ("Superb") by Avvo and is ranked among the top 100 trial lawyers in Virginia.

John has won many millions for traumatic brain injury victims, including:

- **6.5 million** recovered for a car accident victim involved in a three-car collision who became quadriplegic.

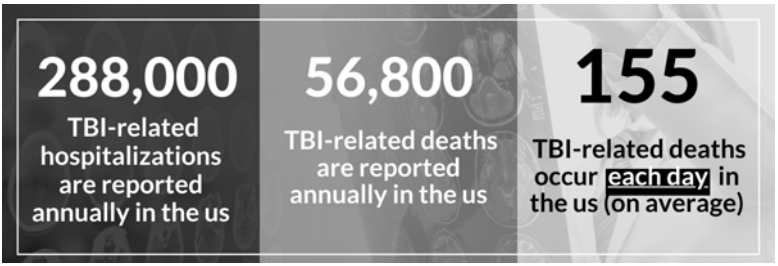
- **$5.8 million** recovered for a client who suffered a traumatic brain injury and post-traumatic stress disorder following his accident.

- **$5 million** recovered for a client who was hit by a construction truck and suffered serious injuries and post-traumatic stress disorder with a mild traumatic brain injury. The settlement with the construction company was reached during mediation.

- **$1.15 million** recovered for a heavy equipment mechanic who developed mild traumatic brain injury symptoms due to his work. He suffered from permanent hearing loss and tinnitus, as well as balance problems and falls. John secured a settlement for his injuries.

CHAPTER 1

AN INTRODUCTION TO TRAUMATIC BRAIN INJURY (TBI)



Source: TBI-related Emergency Department Visits, Hospitalizations, and Deaths (EDHDs). (2019, March 29). https://www.cdc.gov/traumaticbraininjury/data/tbi-edhd.html.

Recent data from the National Centers for Disease Control and Prevention (CDC) found that approximately 288,000 TBI-related hospitalizations and 56,800 TBI-related deaths are reported annually in the United States.[1] They discovered that, on average, 155 people die each day due to TBIs.[1] People who survive TBIs can face effects that last for just a few days or for the rest of their lives.

The CDC defines a traumatic brain injury (TBI) as a "disruption in the normal function of the brain that can be caused by a bump, blow, or jolt to the head or penetrating head injury."[2]

Over the most recent eight-year period for which statistics are available, the number of TBI-related emergency department

visits, hospitalizations, and deaths increased by 53%, according to the CDC.[1]

Even more alarming than the actual number is that this statistic **only** accounts for **reported cases** of TBIs. The estimated prevalence is substantially higher, with as many as 50% of concussions going unreported.[3]

The World Health Organization (WHO) predicted that TBIs would become the third-largest contributor to the global burden of disease and disability by 2020.[4] Currently, traumatic brain injury is the most common cause of death and disability in young people.[1] The elderly are also at significant risk for TBI due to slip and fall accidents.[1]

Despite these staggering numbers, many people suffer in silence due to a lack of information and sufficient healthcare and support services. However, knowledge of the subject is ever-increasing as more focused research is being done to understand the full extent of this epidemic. A more comprehensive picture of TBI would aid in treatment and needed services.

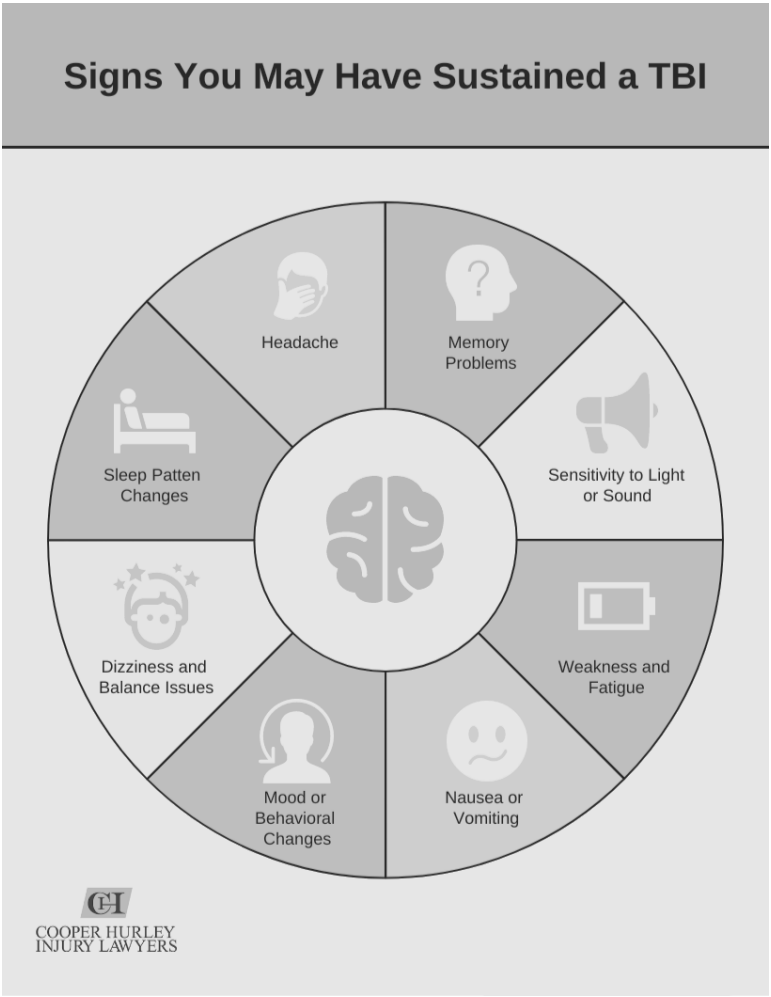
This book is intended to be a helpful resource for TBI sufferers, their families, and their caregivers in the context of obtaining compensation through the legal system for preventable TBIs caused by the carelessness of others. Anyone can sustain one of these injuries. If you believe you or someone you know has suffered a brain injury due to the fault of another party, please contact our traumatic brain injury law team at Cooper Hurley Injury Lawyers: 757-333-3333.

CHAPTER 2

SIGNS AND SYMPTOMS OF A TBI

Traumatic brain injuries vary in cause and severity. Some TBI symptoms can go unnoticed, while others can result in a permanent reduction in one's quality of health and life. TBIs can manifest differently for each individual, and this diversity of presentation can lead to difficulty in diagnosis.[5]

However, there are many common TBI symptoms that one should be aware of[1]:



Sources: 1. https://www.cdc.gov/traumaticbraininjury/symptoms.html

2. Centers for Disease Control and Prevention (2019). Surveillance Report of Traumatic Brain Injury-related Emergency Department Visits, Hospitalizations, and Deaths—United States, 2014. Centers for Disease Control and Prevention, U.S. Department of Health and Human Services.

3. Centers for Disease Control and Prevention (CDC), National Center for Injury Prevention and Control. Report to Congress on mild traumatic brain injury in the United States: steps to prevent a serious public health problem.

Atlanta (GA): Centers for Disease Control and Prevention; 2003.

Other physical symptoms can include[5,6,7]:

- Loss of consciousness, however brief;
- Skull fracture;
- Head or facial pain;
- Atrophy or lesions in brain tissue;
- Axonal shearing of brain cells;
- Seizures;
- Bleeding on the brain; and
- Scalp or facial cuts and bruises.

Additionally, TBIs are associated with sensory and neurocognitive symptoms.

Common sensory symptoms include[5,6,7]:

- Blurred vision or other eyesight problems;
- Ringing in the ears (tinnitus);
- Changes in the ability to smell and taste;
- Hyper-sensitivity to light or sound; and
- Dizziness.

Common neurocognitive symptoms include[5,6,7]:

- Issues with memory or concentration;
- Little to no recollection of events occurring prior to or after the trauma (retrograde amnesia);
- Confusion/disorientation;
- Personality changes;
- Impaired decision-making and impulse control;
- Frustration/irritability;

- Feeling depressed or anxious;
- Fatigue; and
- Sleep disturbance.

There are four overlapping groupings of TBI symptoms.[5] Not all symptoms will be immediately noticed.

Source: Symptoms of Traumatic Brain Injury (TBI). Centers for Disease Control and Prevention. (2019, March 11). http://www.cdc.gov/traumaticbraininjury/symptoms.html.

The most common physical TBI symptom is headache, but there can also be eye pain and various dysfunctions of the eye, like extreme sensitivity to light.[7] The patient may also suffer problems in their ears, such as hearing loss or tinnitus. Tinnitus, or "ringing of the ears," may seem minor, but this symptom can have a significant impact on one's quality of life. Many of these symptoms sound like minor inconveniences, but over extended periods, they can become debilitating problems. Brain injury sufferers can experience problems with other parts of their faces, like jaw pain or TMJ (Temporomandibular Joint Syndrome). Patients may also experience loss of taste sensation. A variety of physical symptoms can manifest from a brain injury, primarily occurring in the face, head, or neck area.

A second type of symptom associated with TBIs are cognitive or memory problems. You could experience a loss in short-term memory, difficulty with word retrieval, attention deficits, or a variety of other symptoms depending on the area of the

brain that gets damaged. For example, frontal lobe damage can lead to problems with decision-making.[8] The sufferer may have difficulty with everyday tasks at home or at work. He or she can end up lost in their own house or could start a fire by forgetting they left the stove on.

The third set of symptoms includes emotional and psychological harm. A TBI sufferer may experience anxiety or difficulty with impulse control. The TBI sufferer's relationships with their loved ones are often strained. Irritability is common. All of these symptoms are related. A concentration problem, which is essentially a cognitive issue, can cause frustration and irritability. Changes are usually clearer to one's family members than to the person who is suffering from the TBI. It can be hard to accept the changes that can come with a TBI and recognize them as symptoms. In any personal injury case, we are always comparing the person before and after the accident.

A fourth set of common TBI symptoms relates to sleep disturbances. Head injury victims can experience trouble with falling and staying asleep. These disruptions to the sleep cycle can cause significant fatigue which negatively impacts one's ability to function properly and exacerbates other symptoms. This chain reaction can ultimately lead to increased frustration and even depression.

Presentation in children is similar to that of adults with TBIs. However, parents and doctors must be careful to assess the full extent of these injuries in kids. Identifying traumatic brain injuries in children can be challenging as their brains are still developing[9]. Younger children are not always able to fully articulate issues like headaches or difficulty with concentration.

Look for these signs and symptoms of head trauma in your child after a car wreck or a fall:

In a child with traumatic brain injury, you may observe the following[10]:

- Persistent crying;
- The inability to be consoled when upset;
- Changes in eating habits;
- Uncharacteristic irritability that comes on suddenly;
- Shorter attention spans;
- Changes in sleeping habits;
- Seizures;
- Increased drowsiness;
- Depression; and
- Loss of interest in their favorite activities or games.

A comparison of a child's behavior and attitude before the TBI event to those characteristics afterward is the key to identifying the more subtle signs of TBI.

In some accident cases, the presence of brain injuries are evident. An object may have penetrated the brain, or a heavy blow may have knocked a victim unconscious. These traumas can result in open head wounds rather than closed head injuries.

Major injuries to the brain can result in torn tissue, intracranial bleeding, skull fractures, brain bruising, and other physical damage, which can lead to long-term complications or even death.[10]

Mild traumatic brain injuries (mTBIs) are more likely to occur than major open head wounds or moderate and severe TBIs.[1] The term "mild" is misleading, because a mild TBI can be quite serious for the person suffering from it. The preliminary severity level of a TBI is determined using a scoring system designed to assess the extent of the initial disorientation or loss of consciousness (LOC).[11] This method will be covered in-depth in **Chapter 3.** This method does not take into account the severity of your other symptoms. A mild TBI can still disrupt your day-to-day life, affecting your career, education, and relationships. About 15% of mild TBI sufferers have symptoms that are chronic and may lead to lifelong problems.[12] However, most people who suffer mild TBIs make full recoveries within four to six months, as the first three months post-injury typically comprise the fastest healing.[13]

Since other injuries from an accident can often take priority in both the minds of the patient and the emergency healthcare provider (HCP), TBIs and their symptoms can go overlooked initially. For example, if you have a broken arm from the accident that requires surgery, that may take precedence over the mTBI. Yet, a delay in diagnosis or treatment can hurt an individual's chances of being adequately compensated for a TBI. The insurance companies often use these delays to fight claims.

You must bring any TBI symptoms you are experiencing to the attention of the hospital emergency department or to your primary care doctor following an accident. If they are dismissive of your concerns regarding the potential concussion or TBI, see a healthcare provider who is willing to take the time to uncover the full extent of your injuries.

If someone else caused the accident that left you with a traumatic brain injury, talk to a personal injury lawyer. Our team at Cooper Hurley Injury Lawyers can help you get the evaluations and care you need.

CHAPTER 3
PROVING A TBI

Early diagnosis of a concussion or TBI is critical for a legal case, as it provides evidence of the existence of a traumatic brain injury for the judge, jury, and insurance company. Insurance companies usually dispute any TBI claims apart from the most severe ones. You have to be on solid legal and medical ground to win a case with an mTBI.

In broad terms, brain injuries range from mild to severe. The most severe brain injuries involve comas and lack of functioning.[10,13] People who suffer severe brain injuries may require ventilators to live. These patients have zero quality of life, leaving families to make agonizing decisions over if and when to turn off life support. Fortunately, catastrophic brain injuries are rare. Most of the TBI sufferers our injury lawyers help have suffered mild traumatic brain injuries. Mild traumatic brain injuries can still impact TBI sufferers' lives radically and cause permanent problems.

The categories of mild, moderate, and severe TBIs come from an evaluation made during a patient's assessment in the ambulance or emergency room.[14]

The hallmark of a TBI is at least a brief period of altered mental status or loss of consciousness at the scene of the event, typically within minutes post-accident. Confirmed loss of consciousness is not a requirement for the diagnosis of TBI.[13] Without a

witness present, it can be hard to determine whether a loss of consciousness occurred. "Altered mental status" can mean a loss of consciousness or being stunned, dazed, confused, or disoriented.[13] However, accurately assessing these sometimes subtle effects can often be more complicated than one might assume. These immediate effects of a head injury are described by emergency personnel using the Glasgow Coma Scale ("GCS").[15]

UNDERSTANDING THE GLASGOW COMA SCALE

The GCS is the most common scoring system used by medical professionals and first responders to categorize traumatic brain injuries.[15] The GCS is a scored assessment that provides a number indicating the severity of the altered mentation and subsequent classification of the injury.[15] The GCS bluntly determines the presence of altered neurological status.

Invented in 1974 by Graham Teasdale and Bryan Jennett, the GCS was originally an assessment tool for comas and impaired consciousness.[16] Today, the scale is used routinely by trained staff to assess head injuries at scenes immediately upon their arrival. Typically, the GCS is administered by first responders at car accidents, medical staff at sports events, and professionals in hospital emergency departments. [17]

Issues that can alter the GCS score include functions improving within the time it takes for trained personnel to arrive and administer the test, information available, and the level of education and training of the administrator.[17,18] If administered too late, the GCS results can underestimate the severity of the injury.

HOW DOES THE GLASGOW COMA SCALE MEASURE BRAIN INJURIES?

The assessment is simple. The GCS measures the three following functions on a scale. The lower the number assigned to the patient, the worse his or her condition.[17]

A score of 1 indicates no function.

Glasgow Coma Scale

Behaviour	Response
 Eye-Opening Response	4 = spontaneous 3 = to sound 2 = to pressure 1 = none NT = not testable
 Verbal Response	5 = oriented 4 = confused 3 = words, but not coherent 2 = sounds, but no words 1 = none NT = not testable
 Motor Response	6 = obeys command 5 = localizing 4 = normal flexion 3 = abnormal flexion 2 = extension 1 = none NT = not testable

A score of 1 indicates no function.

The GCS score is reached by adding up the sum of the three individual tests. If necessary, the GCS is administered multiple times to track the progress of the potential brain injury and whether the patient is improving or getting worse.[17]

HOW ARE BRAIN INJURIES CLASSIFIED USING THE GLASGOW COMA SCALE?

The GCS score determines the classification of a TBI's severity based on loss of consciousness. As the final GCS score is a composite of the three individual tests, a lower overall score indicates greater impairment of functioning across the board.

A GCS score can fall within three ranges that designate a TBI's classification[17]:

- Mild: 13-15
- Moderate: 9-12
- Severe: 8 or less

The Glasgow Coma Scale can quickly indicate the level of extreme brain injuries; however, it is less effective when diagnosing mild TBIs as immediate symptoms can be missed when the test is administered well after the trauma. The scale is useful because it provides an easy reference guide for medical professionals. However, it is only designed for a quick assessment and lacks the accuracy of MRIs or CT scans for brain bleeds.

The Glasgow Coma Scale is not the only indicator of the severity of brain injuries that's used by medical professionals. Tests like MRIs and CT scans may provide more evidence of the extent of neurological damage. Regardless of the GCS score your family member receives, more tests may be needed to assess the scope of the injury. In some cases, the symptoms noted are not even caused by a brain injury. Factors like a patient being intoxicated or in severe pain can result in an inaccurate score on the Glasgow Coma Scale.[17]

The GCS test is not used on younger children because they may not have mastered language skills. Medical professionals instead use the Pediatric Glasgow Coma Scale, a variation of the system used on adults.[17] It uses eye, motor, and verbal responses and considers the values separately.[17]

THE PEDIATRIC GLASGOW COMA SCALE

The Pediatric Glasgow Coma Scale (PGCS) uses the same scoring ranges as the adult test. A score of 8 or lower reflects the most severe brain injury, 9-12 reflects a moderate injury, and 13-15 indicates a mild TBI.[17]

Moderate and severe classifications in children or adults can indicate the potential for significant long-term impairments. However, doctors will not base your entire program of treatment on the Glasgow Coma Scale, and TBI specialists consider a more comprehensive range of factors in assessing the severity of your injury.

Even with better diagnostic technologies available, many people with mild TBIs go undiagnosed as general practitioners, and even emergency room staff, can fail to recognize the indications—especially if other, more immediately dangerous injuries exist. These other injuries can also complicate cases enough that ER staff may miss the information necessary for proper diagnoses of closed head injuries. Some symptoms of mTBIs may develop over the days after initial trauma.

Proof of a traumatic brain injury is important to show in court and to demonstrate to the insurer the nature of the injuries. A clear diagnosis of concussion or TBI in the emergency room is helpful to your case.

WHAT OTHER TOOLS ARE USED BY MEDICAL PROFESSIONALS FOR DETECTING TBIS?

The medical profession uses a wealth of tools to assess and diagnose TBIs. Following a brain injury, clinicians may use neuroimaging techniques to visualize the brain.

Neuroimaging refers to the various methods of producing images of the brain and central nervous system (CNS) that allow brain structure or function to be studied noninvasively.[19]

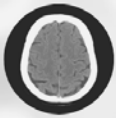
Neuroimaging after an mTBI allows for the detection of injuries that need to be addressed and the determination of the prognosis for the patient.[20]

Before delving into specifics, it is imperative we recognize that a negative scan does not mean a mild TBI has not occurred.[21] One study found that less than 10% of CT scans showed positive findings for patients presenting with both LOC and a GCS score of 15.[22,23]

Neuroimaging tests do not explicitly detect concussions; they provide additional information that helps your physician build a more comprehensive diagnostic workup of your injury.[22]

In this section, we will focus on the different neuroimaging tests commonly used by physicians to aid in diagnosis.

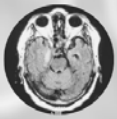
Neuroimaging Tests



CT Scan

Computed Tomography Scan

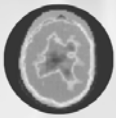
- Provides 3D image of brain
- More detailed than standard x-rays
- Used for quick examinations after accidents or falls
- Can identify large areas of bleeding
- Cannot identify cellular-level harm



MRI Scan

Magnetic Resonance Imaging Scan

- Uses magnetic fields and radio waves to produce images
- Can show evidence of injury at a microscopic level
- When done just after trauma, may not detect progressive brain cell death



PET Scan

Positron Emission Tomography Scan

- Uses a special dye with radioactive tracers to determine areas of disease
- Areas of disease can show up as bright spots on the PET scan
- Can aid in the diagnosis of brain and central nervous system disorders

Sources: (1) Fulham, M. (2004). Neuroimaging. Encyclopedia of Neuroscience, 459–469. https://doi.org/10.1016/b978-008045046-9.00309-0; (2) Mayo Foundation for Medical Education and Research. (2020, February 28). CT scan. Mayo Clinic. https://www.mayoclinic.org/tests-procedures/ct-scan/about/pac-20393675; (3) Powers, W., & Derdeyn, C. (2014). Neuroimaging, Overview. Encyclopedia of the Neurological Sciences, 398–399. https://doi.org/10.1016/b978-0-12-385157-4.00200-1; (4) Mayo Foundation for Medical Education and Research. (2019, August 3). MRI. Mayo Clinic. https://www.mayoclinic.org/tests-procedures/mri/about/pac-20384768; (5) Traumatic Brain Injury (TBI) and Concussion. ASNR. https://www.asnr.org/patientinfo/conditions/tbi.shtml; (6) Mayo Foundation for Medical Education and Research. (2020, August 25). Positron emission tomography scan. Mayo Clinic. https://www.mayoclinic.org/tests-procedures/pet-scan/about/pac-20385078

They include the following:

CT SCANS

Doctors use computed tomography (CT) scans to look at a combination of x-ray images taken from different angles of your head. The technology uses computer processing to reconstruct cross-sectional images (slices) of blood vessels, bones, and soft tissues inside your body into a three-dimensional image.[24] CT scans can provide more detailed information than standard x-rays which cannot show the soft tissues of the nervous system.[25,26]

CT scans are ideal for quick examinations of people who may have sustained internal injuries or bleeding in car accidents or falls.[25] A CT scan can visualize nearly all parts of the body, but not all equally well. It can aid in the diagnosis of disease or injury and serve as a basis for surgical treatment. CT scans can find large areas of bleeding on the brain but not the axonal shearing or tearing of nerve tissue at a cellular level which is typical of mTBI. Some effects of mTBI, such as cellular harm to the brain, are not apparent immediately and unfold in the days following the trauma.

The fact that an emergency physician feels that you need a CT scan of your brain means that they think you may have an acute, urgent problem like an active bleed on the brain. A negative CT scan does NOT mean you do not have an mTBI.

MRI SCANS

Magnetic resonance imaging (MRI) scans are another kind of tool that can aid in the diagnosis of brain injuries. The difference between MRIs and CT scans is that MRI scans use radio waves

while CT scans use x-rays.[27] Both techniques allow doctors to show evidence of injuries at microscopic levels.

Specifically, an MRI uses radio frequencies that bounce off the fat and water molecules in your body. These radio waves then transmit to a receiver in the machine that translates this information into an image of the body that can serve as a basis for diagnosis. However, an MRI administered shortly after the trauma may not detect the progressive brain cell death characteristic of mTBIs.[28]

Not all MRIs are of the same use for the evaluation of brain injuries. An MRI with higher magnetic power adjusted to the proper settings may give more information.[26] Also, some harm to the brain may not be visible to the naked eye of a radiologist. Often, a computer program that can measure specific region size, such as NeuroQuant®, is needed to show brain tissue damage at a finer level of resolution.

The idea is to look at your brain's anatomy for any features that show signs of harm. In some cases, an injured brain can shrink and still fall within normal size parameters.[29] However, changes in brain tissue volume can continue for weeks post-accident. A second MRI taken at a later interval may show an abnormal rate of change as cell death progresses.[29]

PET SCANS

A positron emission tomography (PET) scan is another imaging test that allows medical professionals to check tissue and organ functioning.

A special dye containing radioactive tracers can be inhaled, swallowed, or injected into a vein, depending on what part of

the body needs to be visualized.[30] Specific organs and tissues then absorb this tracer.[30]

When detected by a PET scanner, the tracers allow the doctor to see how well your organs and tissues are working.[30] A PET scan can aid in the diagnosis of brain disorders, including problems with the central nervous system.[31]

The tracer will collect in areas of higher chemical activity, which is helpful as certain tissues of the body, and certain diseases, have higher levels of chemical activity.[30] These areas of disease will show up as bright spots on the PET scan.[30]

Your doctor will then examine your PET scan to assess how your brain is working and check for other abnormalities.

OTHER DIAGNOSTIC TESTS

Functional MRIs (fMRIs) provide highly detailed, three-dimensional views of acute and chronic brain injuries.[32] Diffusion tensor imaging (DTI) studies show evidence of injuries at microscopic levels.[33]

Not all patients presenting with head traumas undergo neuroimaging.[34] These advances in medical technology to visualize and treat TBIs are often expensive, and some health insurance policies will not cover them.[22] However, certain circumstances typically warrant their use, such as indications of decreased neurological functioning, longer periods of loss of consciousness (LOC), or signs of injury to the skull.[22,23]

Some researchers propose imaging should be limited to patients with GCS scores below 13, while others believe anything less than 15 merits imaging.[22] However, studies have shown the importance of neuroimaging for all TBI patients, including

those with GCS scores of 15.[35] Traumatic brain injuries and their devastating effects can last a lifetime, potentially leaving victims with a wide array of chronic problems. Brain injuries do not heal like other injuries. Once brain tissue dies, it does not grow back.[36]

The improving technology of neuro-imagining helps with treatment and diagnosis. These tests also improve the ability to show objective evidence of TBIs.

CHAPTER 4
UNDERSTANDING YOUR TBI

Traumatic brain injuries can take many different forms depending on the impact that the head withstands.[37] It is important to know what you are dealing with to understand your TBI or a brain injury in a loved one.

Common types of traumatic brain injury include:

CONCUSSION

"Concussion" is another term for a mild traumatic brain injury. It is important to take this injury seriously. An mTBI can have significant negative consequences if left unaddressed, from prolonging symptom presentation to an irreversible functional loss.[21]

A concussion can be caused by shaking, a sudden change in movement, or a blow to the head.[37] However, a confirmed direct blow is not needed to diagnose a concussion.[38] The difficulty with diagnosing concussions is that they can often be missed in imaging tests.[21]

If you experience a brief loss of consciousness, a mentally fuzzy sensation, or ongoing headaches, you may have suffered a concussion.[39] Concussions often cause headaches, issues with concentration, disorientation, and memory loss.[37] These injuries can be very serious, or even deadly, if multiple

concussions occur in quick succession or a second one occurs before the first one heals. This condition is known as Second Impact Syndrome, which will be discussed later in this chapter.

States like Virginia now have stringent policies intended to safeguard athletes who suffer concussions to prevent them from playing after sustaining head injuries. These rules are especially critical as the brains of students are still developing.

PENETRATING BRAIN INJURY

A penetrating brain injury occurs when an object pierces the scalp, head, or skull.[37] When the force of an accident causes a penetrating brain injury, usually hair, skin, or fragments of the skull make contact with the brain. This type of trauma to the head can cause damage to be concentrated on a specific section of the brain.

Penetrating brain injuries can be caused by[40]:

- Slip and fall injuries that cause the skull to crack;
- Motor vehicle accidents with intrusion into the passenger compartment in which an object, like a part of the vehicle, penetrates or breaks the skull;
- Gunshot wounds to the head, the leading cause of deaths by TBI; and
- Sports-related injuries caused by blows to the head.

CONTUSION

A cerebral contusion is a bruise of the brain tissue.[39] Your brain bruises the same way the rest of your body does. However, a brain contusion is far more worrisome. This injury is caused by damage to small blood vessels that break and leak. The leaking

blood causes the blue pigmentation of the bruise under the skin. A contusion can cause a host of issues, leading to the building up of pressure on the brain.[41]

Any type of blow to the head can cause a contusion. For example, this injury may occur during a car or truck wreck when the driver's head strikes the steering wheel, headrest, or window. Brain bruises can also be caused by falls or in circumstances where the head hits the ground or another hard surface. Getting hit in the head by a ball or a piece of equipment in a sport can also bruise brain tissue.

An impact that causes a brain contusion can cause damage at the site of the impact, on the opposite side from the impact point if the brain slams into the adjacent side of the skull, or both. These injuries are called coup and contrecoup injuries and will be discussed later in the chapter.

Contusions can vary in severity. If you suffer a severe contusion, you may experience a loss of consciousness, confusion, fatigue, emotional distress, or agitation. Severe contusions can cause the brain to swell. This swelling, also known as cerebral edema, usually develops within 48 to 72 hours after injury.[42] The swelling can prevent your brain from getting the oxygen needed to function correctly. Swelling and pressure on the brain, if not relieved, may have other serious consequences, including permanent tissue death. Sometimes, an operation is required to drain the blood and ease the pressure.[42]

ANOXIC BRAIN INJURY

Anoxic brain injury occurs when the brain is deprived of oxygen completely. A blockage of blood flow can cause this injury as blood is responsible for carrying oxygen to the brain. The brain

requires large amounts of oxygen to function, and if there is not enough in the bloodstream, it can result in anoxic brain injury. Just four to five minutes of oxygen deprivation can cause the death of brain cells, and brain damage likely will occur.[43]

Many medical conditions can cause anoxic brain injury. Strokes, blood clots, heart attacks, or trauma can cause anoxic brain injury. The trauma associated with a significant car wreck can also trigger the injury. Other ways anoxic brain injuries can occur are through carbon dioxide poisoning, drowning, choking, suffocation, or anything that prevents the brain tissue from taking in the required amount of oxygen.[43]

HYPOXIC BRAIN INJURY

Hypoxic brain injury occurs when the brain becomes damaged after receiving insufficient oxygen.[44] It's not complete oxygen deprivation as with anoxic brain injury. The brain receives a small amount of oxygen, but the supply is insufficient to prevent brain damage.[43]

Common causes of this condition are cardiac arrest, near-drowning, incomplete suffocation, diminished blood supply, or exposure to poisonous gasses.[44] One form of hypoxic brain injury is hypoxic-ischemic brain injury, also known as stagnant hypoxia or ischemic insult, which is a complex series of injuries.[44] Birth trauma or improper anesthesia during an operation can cause this harm. Hypoxic-ischemic brain injury encompasses many injuries and combinations of various conditions regarding the brain's health.[45]

Typically, hypoxic brain injuries are marked by an initial loss of consciousness or coma. Even if a person recovers consciousness, they may still have persistent symptoms.[45]

The most common symptom of hypoxic brain injury is short-term memory loss. Additionally, a person may experience a decrease in executive functioning, linguistic problems, vision problems, or a variety of physical deficits related to motor functioning.[46]

DIFFUSE AXONAL INJURY

Diffuse axonal injury (DAI) is a type of TBI that results from blunt injury to the brain which causes rapid movement of the brain.[47] However, this injury is often more serious.

A DAI is caused by the head moving so violently and suddenly that a shearing of the brain cells occur. The injury causes tears in the tissue, harming the brain's connectivity. Major tears may leave a brain injury victim with severe damage and even prove fatal. Axonal shearing can lead to a cascade of chemical changes and cause harm to the brain and its functions.[47]

The severity of symptoms associated with diffuse axonal injuries is dependent on which area of the brain is affected, the severity of the tears, and whether any other brain injuries were associated with the damage.[47]

SECOND IMPACT SYNDROME AFTER A FURTHER CONCUSSION

The second concussion can happen at any time, from moments to weeks, after the initial one.[1] Second Impact Syndrome (SIS) occurs when the second concussion occurs before the symptoms from the first one resolve. SIS may also be called a recurrent traumatic brain injury.[45] This injury could result in either death or severe disability.[48]

Experiencing a second concussion before the first has had time to heal can lead to catastrophic and long-lasting damage. The seriousness of the latter event depends on the location of the injury, the severity of the first concussion, and the degree of trauma sustained by the victim.[49]

Previously, little was understood about the impact of SIS. This lack of knowledge led sports teams to allow their athletes to resume playing too early after their initial injuries. If you suffer a blow to the head in the days or months after a concussion, seek prompt medical care, even if you feel fine. You do not need to experience a loss of consciousness to sustain a second injury. Always take precautions and see your medical provider as soon as possible.

COUP AND CONTRECOUP INJURIES

A coup injury to the brain occurs at the location of an impact with an object during an accident. A contrecoup injury occurs when the side opposite the coup injury is also affected.[49]

1. Primary Impact - Coup
The brain strikes the skull on the side of impact.

2. Secondary Impact -
Contrecoup Impact posterior area of skull.

To best understand how these injuries occur, you need to consider your head's anatomy. Your brain is contained within your bony skull, where it can be kept safe, as brain tissue is soft. However, if the head is hit too violently, the force of the blow can cause the brain to be knocked against the hard, ridged interior surface of the skull. It's not difficult to imagine that if the force is strong enough, the brain can bounce back the other way and hit the exact, opposite side of the skull. The first hit is the coup injury; the subsequent hit is the contrecoup injury. When both occur, it is called coup-contrecoup.

Coup and contrecoup injuries typically involve brain contusions.[49] An impact to the skull from a moving or a fixed object bruises the brain. It can be from your head being thrown back and forth in a rear-end car wreck.

The brain strikes the inside of the skull, front and back. These injuries may also occur as a result of rapid deceleration associated with car, truck, and motorcycle crashes. They are also associated with shaken baby syndrome. When the brain bounces off the inside of the skull, it can lead to bleeding, swelling, and other serious injuries. Coup and countercoup injuries can cause long-lasting damage.

CHAPTER 5
NEUROPSYCHOLOGICAL TESTING FOR TBIS

Neuropsychological testing can be used to estimate certain effects of traumatic brain injuries, but it has limitations. Neuropsychology concerns the relationship between the brain and behavior.[50] Neuropsychologists try to assess the behavioral and cognitive changes that may be found following a brain injury. [50]

Neuropsychological testing is carried out by a PhD neuropsychologist and his or her assistants. The TBI patient is administered detailed questionnaires and exams, typically over two days and up to eight hours in total.[50] Some of these tests are pen and paper tests. Neuropsychological tests are standardized. They are intended to be given uniformly to all patients and scored similarly. These tests can be used to give some indication of how the condition has affected your memory, mental capacity, and academic abilities. [51]

The neuropsychologist will try to assess your level of functioning based on your scores in a range of categories. The testing assesses the patient in the following areas during in-depth interviews and pen and paper exams:

- Quality of life;
- Intelligence;

- Language skills;
- Memory;
- Attention span;
- Functions such as planning skills and understanding concepts; and
- Mood and emotional state.

The neuropsychologist will estimate your baseline functioning before the TBI. In other words, they will consider what the brain injury victim's scores would likely have been before the accident. There is an element of educated guesswork, because it is highly unlikely that the TBI sufferer will have been subjected to a battery of neuropsychological testing before his or her accident. The neuropsychologist will look at things like your school or work history. Comparing what the TBI victim could probably do before the injury to how they perform on the testing after the injury gives some indication of what percentage of functioning the TBI victim has lost.

An individual's scores on tests are interpreted by the doctor by comparing the TBI sufferer's results with those of other similar people.

While scores are important, the neuropsychologist also looks at strengths and weaknesses to assess how the brain is functioning. This interpretation matters. For example, one PhD tester may say your results are in the low part of average, while another may say the same numbers show significant impairment. This is soft science.

Unfortunately, some neuropsychologists may minimize the estimate of the harm, particularly if they are paid by the insurance company fighting against your injury case. There

is a lot of room for subjective interpretation. In litigation, the insurance defense lawyers have the right to make you see doctors of their choice.

If you were a high functioning person before you were injured, such as an accountant, you may still be quite mentally capable even after the TBI. You may, though, be far less capable and lower functioning than before your brain injury occurred. Often, the best evidence of the effect of a TBI comes from lay witnesses such as family members or work managers, rather than neuropsychologists. Your husband, wife, or best friend may have a better idea of how a brain injury changed you than a neuropsychologist who never knew you before your accident.

Neuropsychological tests can be beneficial in forming part of the case we build on your behalf to show the lasting harm from a traumatic brain injury on your life. A key use of this testing might be to show the impact on your work, including any potential loss of earning capacity. For example, if you cannot hold the job you had before the accident because of your TBI, the neuropsychologist can explain certain aspects of the TBI symptoms that a vocational expert can rely on to determine what work you may still be able to do.

CHAPTER 6
TBI LITIGATION

Having a lawyer who knows how to put together a TBI case forensically to convince the judge and jury is critical to the success of your case. Decades of experience with TBI cases have taught me what elements I need to win the case. I also understand that this litigation is quite expensive.

It can cost tens of thousands of dollars for experts to prove a TBI all the way through a jury trial. This money is not for the attorney's time. It is out-of-pocket money spent to prove elements of a TBI, to have testing done, and to have experts come in and testify.

At Cooper Hurley Injury Lawyers, we often pay tens of thousands of dollars out of our pockets to prove the TBI and other damages. The other side will hire lawyers and doctors to dispute your claim of traumatic brain injury. On top of this, each party may want to depose the other's experts. It's incredible how quickly things add up. However, if your loved one has a permanent TBI and other catastrophic injuries, then this may be required.

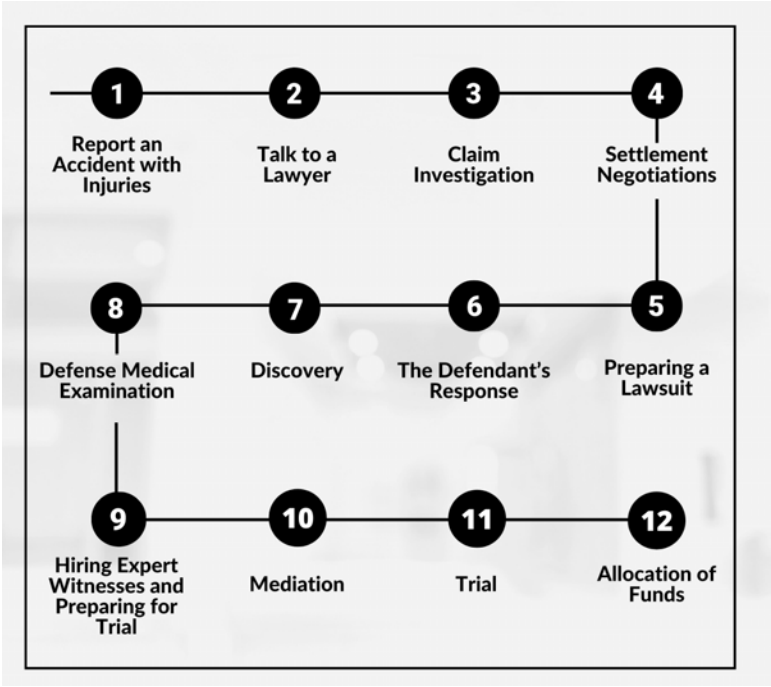
We are willing to take the risk with our clients to advance the money needed to get them full compensation. At the end of the case, if we win for you, we get these costs back from the payment by the insurance company for the negligent person. If

you have a serious case with a TBI, you need a law firm that has the resources and is willing to advance these sums for its clients.

STEPS IN A BRAIN INJURY LAWSUIT

The steps in brain injury litigation are similar to those in other serious injury litigation. However, insurance defense attorneys will usually require more proof in these cases. Yet, the devastating nature of some brain injuries means that compensation may be higher than other personal injury actions.

These are some of the steps in a TBI case:



1. **Report an Accident with Injuries**

   If you were hurt in a car or truck wreck, a slip and fall, or another accident, and you believe you suffered a head injury or concussion, contact a medical professional

immediately. Usually, it is best to go to a hospital emergency department directly from the scene of the wreck. You can suffer a brain injury without a direct impact to your head. The forces of the accident can damage your brain in your skull. Seeking prompt medical attention is essential, not just for your health at that moment, but to allow your doctors to understand your TBI and explain what happened. If you fail to get medical help in a timely manner, it will be harder to convince the insurers you suffered a serious injury.

Your medical records play an integral part in any TBI case. Make sure to share any TBI symptoms or concerns with the healthcare providers. If the initial doctor does not address your TBI and you suffer some of the symptoms listed in this book, consider getting a second opinion.

2. **Talk to a Lawyer**

   You should talk to a lawyer with experience in traumatic brain injury cases at an early stage in the process. Ideally, you should call right after the initial treatment. At Cooper Hurley Injury Lawyers, we offer free initial consultations, and there is no obligation to sign up. An important factor is whether another party was to blame for your brain injury and could be held responsible for paying you damages in a court of law. Research lawyers with track records in TBI cases. Although some people deal directly with insurance companies after suffering minor injuries, it is risky to take this approach if you suffered a serious trauma like a brain injury. You could fail to recover the money you need to cover your future medical expenses and other losses. By hiring an experienced TBI lawyer immediately, you increase the chances of a better result.

3. **Claim Investigation**

When you hire a lawyer, your attorney should immediately start investigating the claim. He or she can obtain and review your medical records, the police report, the 911 call or ambulance information, available evidence like closed-circuit TV footage, and police bodycam evidence. The lawyer should also interview witnesses. This investigation will give an initial indication of the strength of your case and preserve the critical information.

4. **Settlement Negotiations**

Nearly all personal injury cases in Virginia, including brain injury cases, involve liability insurance companies as the real payor. Your lawyer will file a claim with the insurance company for the person or corporation that caused the accident. Locating all available insurance coverage is key to getting a full recovery. If the at-fault company is a trucking company or business, there is a better chance that there will be enough coverage to compensate you fully for your TBI.

After you are medically stable, and we know what your future harms and losses likely are, the negotiation process can start with the insurance adjuster. The attorney will work with you to decide what amount to demand for your injuries and send the claims adjuster a settlement demand letter. The parties may communicate a series of offers and counteroffers. Many cases resolve at this stage, even before filing suit.

No settlement should take place without the client's full understanding and agreement. You need lawyers who are careful not to settle until they know what your future holds, especially when there are future losses and permanent

injuries. Once a settlement agreement is made, you cannot come back later to get more.

5. **Preparing a Lawsuit**

   If settlement talks break down, or the insurance company is not willing to be reasonable, the attorney may have to file a lawsuit, also referred to as a complaint, in court. Under Virginia's statute of limitations, you normally must file a lawsuit within two years of the injury occurring. If the attorney believes the insurance company is stalling, he or she will likely recommend a move into litigation. The lawsuit will state the facts of your injury, the claims against the defendant, and a request for a jury trial.

6. **The Defendant's Response**

   The defendant must respond with an answer to your lawsuit within three weeks of being served. The defendant must list any defenses such as contributory negligence, pre-existing conditions, or violations of the statute of limitations. Attorneys hired by the insurance company typically represent the defendant.

7. **Discovery**

   Discovery is an information-exchange process both sides use to dig deeper into a brain injury case. The discovery process begins after a complaint is filed and answers, counterclaims, and other responses have been filed. Each party must answer interrogatories and respond to requests to produce documents and other evidence.

   Interrogatories are written questions sent from one party to another. A party who receives interrogatories must answer them under oath.

Discovery includes requests for production of documents. These are requests in writing demanding a party turn over documents relevant to the brain injury litigation.

Requests for admissions are statements that the parties must either say are true or not. They are useful because they pin the parties down to a "yes" or "no" answer. If you fail to answer, or answer improperly, then the requests may be presumed to be true.

The parties' lawyers will depose relevant witnesses to the case. A deposition is a powerful weapon in an attorney's arsenal. The lawyer can ask probing questions to witnesses under oath. A deposition transcript can be useful at a trial. It avoids surprises, and the trial evidence can be checked against that of the deposition.

8. Defense Medical Examination

The insurance company's lawyers have the right to make you, the plaintiff, submit to an evaluation with a doctor picked by the defense. The report will invariably be favorable to the defendant. The doctor will seek to downplay evidence of a traumatic brain injury or claim your symptoms are temporary or caused by another factor.

9. Hiring Expert Witnesses and Preparing for Trial

Both sides will line up expert witnesses in serious brain injury cases. These include medical specialists who can explain the effects of a TBI on your life. Medical experts who may appear in a TBI trial include neurologists, therapists, neuropsychologists, and neuropsychiatrists. You need to prove you suffered a TBI. Only a doctor can testify about the diagnosis of a TBI and any permanency.

Your lawyer can also call economic experts who will testify about your future economic losses as well as vocational experts to testify how a TBI will impact your ability to earn money and hold down employment.

The insurance company will usually hire medical experts and vocational experts of its own. Once the experts have been named, the attorneys may depose expert witnesses.

10. Mediation

We will often seek to settle a case shortly before a trial through mediation. Mediation is also known as alternative dispute resolution. It is becoming increasingly popular and is sometimes required by the courts.

Mediation uses a neutral third party, usually an attorney or a retired judge, who helps the parties to reach a settlement. In mediation, the mediator adopts a collaborative approach in moving between the parties, discussing offers and exchanging information. The mediator cannot resolve the case without the agreement of the parties. Mediation is usually successful. If so, the case is done and settled before trial.

11. Trial

A personal injury trial involving a judge and jury will take place if the parties are unable to settle the case beforehand. A case will sometimes settle days before, or even during, a trial. The jury will either find in your favor and award damages or give a verdict to the defense. The burden of proof lies with the Plaintiff, who must prove all the elements of the case by a "preponderance of evidence" at a civil trial. This is easier to satisfy than in a criminal trial, which

requires a defendant to be convicted beyond a reasonable doubt. The civil burden of proof requires a Plaintiff to prove the claim is valid more likely than not. If not appealed, the jury verdict becomes final.

12. Allocation of Funds

Once the case proceeds are received from the insurance company, you will get your personal injury funds. This usually happens as a result of a settlement. If the case goes to trial and the jury awards you damages, you will receive the money assuming there is no appeal. The exact distribution of funds will be broken down in writing, to the penny, to show who is getting what.

TBI litigation is complicated. It's important to hire a lawyer who has litigated these cases before. These cases involve painstaking work and smart presentation of evidence.

CHAPTER 7

TBI AND POST-TRAUMATIC STRESS DISORDER

Post-traumatic stress disorder (PTSD) often shows up after severe auto accidents with serious or life-threatening injuries. Survivors of accidents that caused TBIs often also have PTSD. The trigger is that the victims feel that they might have been killed.[52]

Recurrent, intrusive thoughts of the wreck and flashbacks or nightmares about the event or dying are the hallmarks of PTSD.[52]

The seriousness of PTSD was first recognized in Vietnam veterans when they returned home.[53] A study conducted four decades after the Vietnam conflict found 271,000 veterans still had PTSD.[54] Veterans also suffered in previous conflicts, but less was known about the condition. In 1915, during World War I, Charles Myers coined the term "shell shock" to describe soldiers who were shivering, fearful, and had intrusive memories.[54] These symptoms are consistent with PTSD.[55]

A manual used by doctors to diagnose psychological injuries, DSM-5, dictates that six months or more of flashbacks and other intrusive thoughts are required for a PTSD diagnosis.[56] If you also suffered a TBI from the event, some symptoms of the two conditions can overlap.[52]

A person with PTSD may suffer from depression and anxiety. The PTSD may disrupt sleep patterns and cause fatigue. PTSD is also associated with headaches and memory and concentration problems.[52] Sometimes, it's hard to say whether it is PTSD, the TBI, or both conditions that are causing the dysfunction in the victim's life. From the patient's standpoint, it does not matter which one, because these symptoms impair the person's relationships and work regardless of the cause. If the person did not have symptoms before a wreck, and they do shortly afterward, it is usually clear that the symptoms arose from the accident.

There are also aspects of chronic pain that can be similar to TBI symptoms. If you have a horrendous injury that has caused pain in your spine, legs, or chest for over six months, the physical pain can make you depressed or irritable. Catastrophically injured people often suffer a whole range of conditions that feed on each other and leave the person unable to function the way they did before their accidents. The long-term pain from other physical injuries may also lead to fatigue and neurocognitive problems.

Scientific understanding of the interplay between brain injuries and PTSD is evolving. The study of TBI is in flux and moving forward. Many brain injury survivors who we help also suffer from PTSD. Your treating healthcare providers should be interviewed by your TBI attorney to help explain how PTSD may influence your condition.

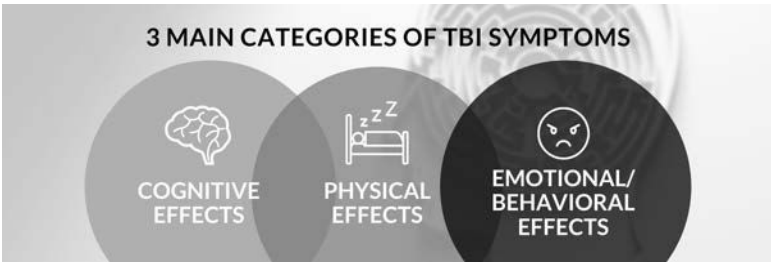
Source: Mayo Foundation for Medical Education and Research. (2018, July 6). Post-traumatic stress disorder (PTSD). Mayo Clinic.

https://www.mayoclinic.org/diseases-conditions/post-traumatic-stress-disorder/symptoms-causes/syc-20355967.

CHAPTER 8
LIVING WITH A TBI

Life with a traumatic brain injury can be tough for the sufferer and family members alike. TBIs are associated with a wide range of neurological, physical, and psychological consequences that affect the sufferer's behavior and his or her overall quality of life. The change is clearly evident in people with severe traumatic brain injuries. TBI effects can be more subtle for people with mild or moderate traumatic brain injuries. Helping you understand and adapt to TBI symptoms should be a key part of any treatment plan.

The three main areas a TBI sufferer must come to terms with are "knowing and thinking" consequences, physical effects, and emotional and behavioral problems.



The extent to which a sufferer comes to terms with these issues depends on factors like family support, the individual's adaptability, and access to services and finances. Often, a personal injury lawsuit provides the finances needed for the

long-term treatment of a brain injury, helping the victim to afford access to care.

THE KNOWING AND THINKING CONSEQUENCES OF A TRAUMATIC BRAIN INJURY

Knowing and thinking are known as cognition. Cognition includes being able to retain information, understand it, and use it. Brain injury sufferers often experience difficulties concentrating. They lose the ability to process effectively and to understand information and, as a result, may suffer losses in the areas of communication, memory, planning, and organization.

TBI sufferers can lose part of their abilities to solve problems, to make decisions, to control impulses, and to exercise rational judgment. These comprehension problems may be temporary or permanent, depending on the extent of the injuries.

Cognitive difficulties or deficits are typically most acute in the weeks and months following a brain injury. The patient usually improves over time. However, a significant number of people with TBIs will have some longer-term effects. Neuropsychological testing can help establish how your traumatic brain injury affects your work or school life. Once symptoms linger for a year, they may well be permanent.

Work on comprehension problems by addressing them one at a time. Start on a small scale, so you are not overwhelmed. Try practical solutions like reading a paragraph of a book or adding numbers in a quiet place. Move on to more difficult tasks like reading a short story or multiplication. Take regular breaks.

Foggy or confused thinking is common after a traumatic brain injury. Sufferers may struggle to follow storylines or take longer

to comprehend certain situations. It is important for family members to be patient and to give them time. Traumatic brain injury sufferers frequently experience delays in reaction times.[57] If a family member suffers from delayed reactions associated with TBIs, they should consider not driving until a specialist has tested their visual skills and reaction times.

Communication problems are one of the most upsetting aspects of TBIs. You may not be able to find the right words to say or be able to understand what other people are saying. People with TBIs may ramble off-topic or be unable to express their thoughts. It may be difficult to communicate using facial expressions. They find it hard to understand emotions and may not understand some humor and sarcasm.

The mind tries to fill information gaps and may create ideas about things that did not happen. As such, TBI sufferers can experience "false memories."[58] You may recall a conversation with someone yesterday that did not occur or remember eating food you did not have for breakfast. At the same time, you might accurately recall your high school prom from a decade or two ago.

HOW CAN YOU ADDRESS MEMORY ISSUES AS A TBI SUFFERER?

Certain techniques may help you get your memory back after a brain injury, or at least adapt better. It's important not to give up.

VIRGINIA Lawyers Weekly
VALAWYERSWEEKLY.COM

VERDICTS & SETTLEMENTS

Three-car collision resulted in plaintiff's becoming a quadriplegic


COOPER


STEINGOLD


MENDELSON

$6,500,000 settlement

A three-car collision resulted in the plaintiff's becoming a quadriplegic. There were major contributory negligence issues that were hotly contested, as the plaintiff was alleged to be improperly stopped on the roadway.

The case settled in mediation for $6,500,000.

[020-T-117]

Type of action: Motor Vehicle Collision

Injuries alleged: Quadriplegia

Tried before: Mediation

Name of judge or mediator: Judge Thomas Shadrick

Date resolved: 08/18/2020

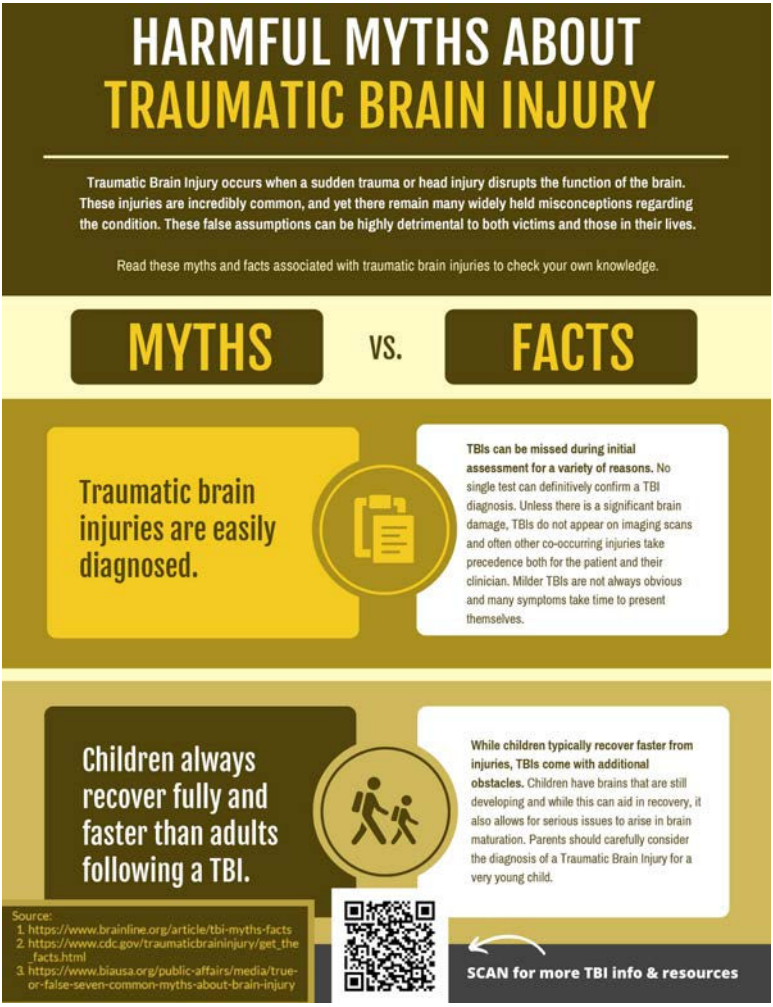
Special damages: Past medical bills in excess of $2,000,000.00 and contested future medical expenses

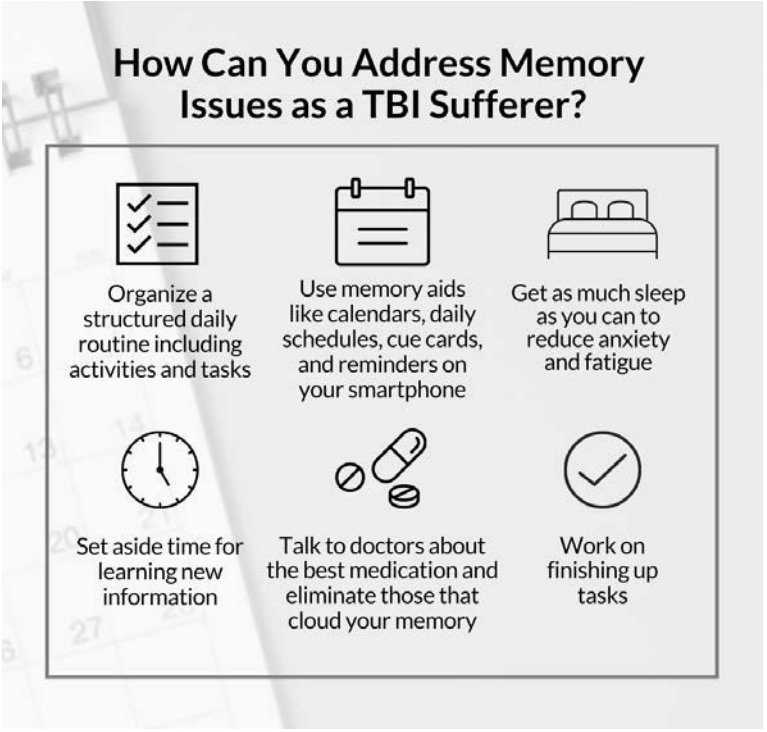
Verdict or settlement: Settlement

Amount: $6,500,000

Attorney(s) for plaintiff: John M. Cooper, Norfolk; Ira Steingold, Suffolk; Judd Mendelson, Suffolk

Plaintiff's expert(s): Alan Michaelis


HARMFUL MYTHS ABOUT
TRAUMATIC BRAIN INJURY
Traumatic Brain Injury occurs when a sudden trauma or head injury disrupts the function of the brain. These injuries are incredibly common, and yet there remain many widely held misconceptions regarding the condition. These false assumptions can be highly detrimental to both victims and those in their lives.
Read these myths and facts associated with traumatic brain injuries to check your own knowledge.
MYTHS
VS.
FACTS
Traumatic brain injuries are easily diagnosed.
TBIs can be missed during initial assessment for a variety of reasons. No single test can definitively confirm a TBI diagnosis. Unless there is a significant brain damage, TBIs do not appear on imaging scans and often other co-occurring injuries take precedence both for the patient and their clinician. Milder TBIs are not always obvious and many symptoms take time to present themselves.
Children always recover fully and faster than adults following a TBI.
While children typically recover faster from injuries, TBIs come with additional obstacles. Children have brains that are still developing and while this can aid in recovery, it also allows for serious issues to arise in brain maturation. Parents should carefully consider the diagnosis of a Traumatic Brain Injury for a very young child.
Source:
1. https://www.brainline.org/article/tbi-myths-facts
2. https://www.cdc.gov/traumaticbraininjury/get_the_facts.html
3. https://www.biausa.org/public-affairs/media/true-or-false-seven-common-myths-about-brain-injury
SCAN for more TBI info & resources



People who suffer from TBIs struggle to schedule and keep appointments. Driving, cooking, doing laundry, or working on grocery lists are often a struggle. This is because people with TBIs can have difficulty recognizing the problems they need to solve. They may fail to prioritize and experience problems responding to fast-moving situations and challenges.

UNDERSTAND YOUR IMPAIRMENTS

After suffering a brain injury, you could experience a loss in self-awareness and self-control. You may act inappropriately in social situations. Often, people with brain injuries will not recognize their changed behavior or may be in denial. They frequently say hurtful or insensitive things, lack boundaries, and embarrass people without the intention of doing so. Due

to this, family members and caregivers need to be patient and understanding.

Psychotherapy can be helpful for TBI sufferers to help increase their understanding of what has happened, including the injury and its effects. Having a trusted professional to talk to can provide stability and encouragement toward adapting to the TBI as best as possible. Cognitive-behavioral therapy (counseling to better control thoughts and actions) can play a part in the treatment of TBI sufferers. However, the success of these types of therapies depends on the severity of the TBI and a patient's receptiveness to this form of treatment.

DEALING WITH DEPRESSION AFTER A TBI

Research suggests that a high percentage of TBI sufferers experience depression or other psychological disturbances. Treatment for these emotional and behavioral difficulties typically includes a combination of medications and psychotherapy.[59]

As well as seeking treatment, it is essential that you structure your day as to avoid giving in to hopelessness. Aerobic exercise and structured activities can help sufferers feel connected to the world.

Depression is a serious mood disorder characterized by feelings of extreme unhappiness, loss, and sadness that last for a significant period of time.[60]

The telltale signs of depression you should look for include:

- Feeling hopeless or down;

- Losing interest or pleasure in your usual activities or pastimes;
- Feeling like you are a failure or worthless;
- Poor sleep;
- Difficulty concentrating;
- Changes in appetite;
- Withdrawing from other people;
- Fatigue or lack of energy;
- Speaking or moving more slowly;
- Feeling restless; and
- Intrusive thoughts of death or suicide.

Sadness is a normal response to a traumatic brain injury. Two-thirds of people who suffer TBIs will experience depression in the seven years after their injuries.[61] However, you should seek help if you experience ongoing symptoms.

If you have symptoms of depression, it is important to seek professional help as soon as possible with a healthcare provider who is familiar with TBI. Depression is a serious medical problem like cardiac issues or high blood pressure. It is vital to receive treatment rather than suffer in silence.

DEALING WITH ANXIETY AFTER A TBI

The onset of anxiety after sustaining a brain injury is common.[62] Brain injury victims face uphill struggles in dealing with daily tasks. These situations can leave a sufferer feeling overwhelmed, especially if he or she is being asked to make decisions. Too many demands and pressures, such as the need to return to employment soon after an accident, can trigger anxiety.

Situations that require rapid processing, such as being in crowds or being surrounded by loud children, can cause anxiety.

Ricardo Jorge wrote in Psychiatric Times that about two-thirds of patients who suffer from depression after a brain injury also experience anxiety.[63] Anxiety can also be a symptom of post-traumatic stress disorder, which we discussed in **Chapter 7**.

Anxiety is typically treated with medication and psychotherapy by a trained professional. These strategies have a high rate of success in controlling the ill effects of anxiety.

DRUG AND ALCOHOL ADDICTION AND TBI

Drug and alcohol abuse is more prevalent in people with traumatic brain injuries. Studies have shown that 37-66 percent

of TBI sufferers report alcohol abuse issues.[64] Up to 44 percent of TBI survivors abuse illegal drugs compared to 15 percent of non-TBI sufferers.[65] Much of this behavior can be a form of self-medication. The mental anguish from a TBI can lead one to substance abuse.

People who suffer from alcohol or drug abuse after a TBI should seek the support of community help organizations. Family members should look at environmental factors and assess whether a TBI sufferer has sufficient help and community support. Some medications can decrease cravings for drugs or alcohol, while therapy can help with addictions.

FATIGUE AND APATHY AFTER A TBI

As many as 70 percent of TBI sufferers complain of fatigue, weariness, or a lack of energy.[66] Fatigue can affect mood, functioning, memory, and concentration. This can be dangerous for TBI sufferers who get behind the wheel.

Here are some strategies for dealing with tiredness after a brain injury[67]:

- Identify activities that make you tired and limit them;
- Set out and plan a daily schedule you can manage;
- Avoid alcohol and marijuana;
- Don't drink coffee or other products containing caffeine after lunch. It may impact your sleep;
- Do things that require the most physical exertion earlier in the day;
- Exercise daily. Exercise helps the mental function and alertness of TBI sufferers;
- Set a regular schedule for going to bed and taking naps;

- Get your doctor to review your medication; and
- Avoid over-scheduling.

DEALING WITH ANGER AFTER A TRAUMATIC BRAIN INJURY

Anger is a very common symptom after a traumatic brain injury. According to BrainLine, some TBI sufferers are angry about their injuries or problems associated with them, like disabilities and losses of jobs, friends, income, and overall control over one's life.[68]

The impulsive anger associated with a TBI comes and goes suddenly. An effective way to deal with it is to learn to take a step back and calm down. In sporting terms, the TBI sufferer should take a "time-out."

If a family member suffers from post-TBI temper issues, learn the warning signs. Have a procedure in place to deal with sudden outbursts of anger. Sadly, the effects of anger and irritability in TBI survivors can increase their social isolation as their relationships suffer.

Some relaxation and anger management techniques can include:

DEALING WITH INSOMNIA AFTER A BRAIN INJURY

Insomnia, or lack of sleep, is a common problem associated with traumatic brain injuries. As many as 70 percent of TBI sufferers experience issues sleeping.[69]

Neurotransmitters, including histamine, gamma-aminobutyric acid (GABA), and orexin stimulate the wakefulness of the brain. One theory is that the brain fails to produce the correct amount of neurotransmitters at the best time for sleep. Insomnia can form part of a vicious cycle for TBI sufferers, exacerbating anxiety, depression, and other issues.[70]

Some ways of coping with insomnia after a brain injury include:

- Reduce caffeine intake in the afternoon and evening;
- Cut down on brain stimulation like TV shows and video games;
- Involve your primary care provider in a review of medications that will help you sleep; and
- Draw up a plan to help your brain to re-learn normal sleep cycles.

CHAPTER 9
TREATMENT FOR TBIS

There are treatments available to help people after they are diagnosed with brain injuries. Although following your doctor's orders, taking your medication, and resting can be enough to treat a mild TBI, the healing process may take longer and require more significant intervention.

Doctors often recommend that people with TBIs cut down on tasks that require intense concentration, like working on a computer. Children who suffer concussions should stop playing sports until cleared by trained caregivers.

Important treatments for traumatic brain injuries include:

1. **Emergency Treatment for Acute TBIs**

   Emergency care focuses on keeping the patient stable and alive after serious head trauma. Doctors intervene to ensure an adequate oxygen flow to the brain. They aim to control blood pressure and prevent further injury.

   Surgery may be necessary to remove blood clots and relieve pressure on the brain. Surgeons repair fractures by setting or removing pieces of skull displaced in an accident. They can also reduce any pressure and drain excess fluid by drilling a hole in the skull.

2. **Occupational Therapy**

   Occupational therapists help people who've suffered brain injuries reintegrate back into work and the community. The American Occupational Therapy Association points out that a brain injury can affect your motor, sensory, cognitive, and behavioral functioning.[71]

   TBI sufferers often find it difficult to return to work. Skills like concentration and balance are often impacted by brain injuries. You can also become less able to handle the environment in the workplace like noise or working at heights.

   Your first contact with an occupational therapist may be in the hospital. Occupational therapists work on self-care and help patients regain their cognitive skills. People who suffer moderate or severe TBIs often require ongoing periods of occupational therapy. Community-based rehabilitation focuses on improving your skills, including physical and

cognitive functioning, social integration, mobility, self-esteem, productivity, family relationships, and independent living skills in the community.

Occupational therapists can:

- Teach memory-improvement techniques including the use of daily planners, checklists, and technological devices;
- Help with daily tasks like making meals, shopping, childcare, and daily routines;
- Create effective routines and schedules;
- Help TBI victims re-learn social skills;
- Help with adapting your home such as labeling cupboards and drawers;
- Guide family members on how to deal with a brain injury sufferer's moods and behavior; and
- Provide financial and housekeeping training.

3. Speech Therapy

A brain injury often interferes with communication on many levels.[72] Speech therapy works on the patient's ability to form words and other communication skills.

People with TBIs may find it difficult or impossible to listen and remember what they heard.[72] They may interrupt or not be able to share information with others properly. Sometimes, TBI sufferers can still speak, but they struggle to put their thoughts together in a coherent way.

Speech therapists make formal and informal assessments. A speech therapist or speech-language pathologist will draw up a treatment plan for the patient.

In the early phases of treatment, a therapist seeks responses to sensory stimulation. Treatment focuses on the client maintaining attention during basic activities and reducing confusion. Memory exercises, such as using a log, can help communication and speech skills. People with TBIs may work on their social skills in small groups and learn problem-solving. According to BrainLine, treatment may include taking people on community outings to reintegrate survivors back into their lives.[73]

4. Medication

Medication is essential for many TBI sufferers, particularly in the immediate aftermath of their accidents. Medications can treat TBI symptoms and reduce some of the risks associated with brain traumas.

Some important categories of drugs for TBI include:

- Headache medication;
- Anti-anxiety medication to reduce feelings of fear and nervousness;
- Anticonvulsants which prevent seizures;
- Anticoagulants which are given to prevent blood clots;
- Antidepressants prescribed by doctors to deal with the symptoms of depression and unstable moods;
- Stimulants that make people with TBIs more attentive; and
- Muscle relaxants or pain medication.

5. **Physical Therapy**

   Physical therapists have a role to play in helping those with traumatic brain injuries. People with TBIs often lack mobility, especially if they also suffered neck injuries. A physical therapist can work on your range of motion. Physical therapists use neurodevelopmental treatment to help patients develop normal movements as opposed to abnormal movements which are sometimes associated with brain injuries.

6. **Hyperbaric Oxygen Therapy**

   Hyperbaric oxygen therapy (HBOT) is the use of oxygen at higher than atmospheric pressure to treat patients. HBOT dates back to the 1930s when it was used for the treatment of decompression illness in divers.[74] The U.S. Food and Drug Administration (FDA) lists 13 FDA-approved uses for HBOT, including decompression illness, air embolism, gas gangrene, osteomyelitis, radiation necrosis, and diabetic ulcers, states the Psychiatric Times.[75]

   Some chronic neurological conditions, including traumatic brain injury (TBI), have been shown to respond well to HBOT. Although studies point to the benefits of hyperbaric oxygen therapy repairing nerves after a brain injury, it is not yet FDA-approved for TBI.[76]

7. **Neuro-Optometric Rehabilitation**

   Neuro-optometric rehabilitation treats visual deficits caused by traumatic brain injuries and other neurological conditions. Neuro-optometric therapy treats visual, perceptual, and motor disorders.[77]

Neuro-visual conditions are highly complex and require the care of a well-qualified expert. Many people who suffer TBIs experience vision problems. Problems often include blurred vision, sensitivity to light, headaches, and loss of visual field. Patients do not always realize the connection between their TBIs and nausea and dizziness. A neuro-optometrist may use different lens prescriptions and follow other neuro-optometric rehabilitative approaches, including vision therapy.[77]

8. Home Health Care

Many people with TBIs can live relatively independent lives in their own homes. However, they are more likely to suffer isolation, depression, and other issues than the general population.

Elderly TBI sufferers are often more vulnerable to falls or other accidents. Home health services can provide a wide range of treatments to people in their own homes, including hands-on care, help with dressing and medication, and assistance in setting and achieving lifestyle goals. Patients can also receive physical therapy, nursing care, and even music therapy.

Organizations such as BrainLine and the Brain Injury Association of Virginia can put you in touch with home health providers. Not every TBI patient has the benefit of spousal or family help. In some significant TBI cases, the cost of home health care in the future is a major expense to consider.

CHAPTER 9

CALCULATING TBI DAMAGES

People who have insurance claims or lawsuits from brain injuries due to the fault of other people can usually claim two types of damages - special and general. Lawyers use the term "special damages" to mean economic losses that are calculable. In a TBI case, special damages include medical bills, both past and future. Another economic loss can be lost wages from missed time at work. If your brain injury renders you unable to do your job, but you are capable of a lower paying role, an expert can calculate your loss of earning capacity, which is the ability to earn money. If these earning losses continue, then we can claim future lost wages or loss of earning capacity.

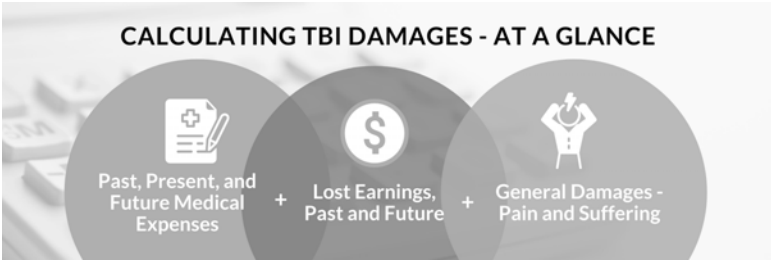
Beyond economic damages, you can claim "general damages," which means loss of quality of life. Sometimes this is called pain and suffering. It is easy to dismiss somebody else's pain and suffering, but pain, suffering, and mental anguish are very real parts of a traumatic brain injury. Many quality of life issues like inconvenience and humiliation are not quantifiable as economic losses, but are significant harms to TBI sufferers. They may feel socially isolated as a result of TBIs, especially if they experience personality changes or lose the ability to work. TBIs can cause sufferers to lose the ability to drive and they find themselves unable to get around independently. These instances of a reduction in quality of life for the TBI sufferer are elements

of damages that an experienced traumatic brain injury lawyer knows how to establish. One main way to understand the harms to the TBI client is just to ask them and their family.

We also determine the damages by talking to experts and developing lay testimony. One of the best ways to assess the harms and losses is to spend time with the brain injury sufferer to learn what they were like before the injury and to find out how their life has changed since the injury. When we are arguing with the insurance company or before a jury, we say the economic losses are just the tip of the iceberg. They are quantifiable losses, like wages and medical bills, to get you back the monetary losses. Yet, the loss of your quality of life is more important and has an even greater value. So often, the folks that know the person from work, church, or the neighborhood say that he or she is not the same person. We collect these stories, with specifics, to humanize the client's loss of quality of life.

CALCULATING TBI DAMAGES - AT A GLANCE

Any personal injury settlement or verdict combines special and general damages. Here are the elements:



1. **Past, Present, and Future Medical Expenses**

   Medical bills after an injury are added up. If your TBI will lead to ongoing medical care or a need for assistance with

daily living, we use experts to put a figure on your future medical bills and expenses.

2. **Lost Earnings, Past and Future**

   The sum of lost income and benefits due to an accident is calculated. We place a dollar value on the benefits you had that were used up, like sick time. We work out future lost earnings and benefits. If you were forced to take a lesser paying job or cannot work at all, loss of earning capacity is calculated.

3. **General Damages - Pain and Suffering**

   The amount awarded for general damages often exceeds that of special damages. The harms and losses from a TBI are extensive. One valuable exercise is to create a list of all the negative effects. The harms and losses should be developed by talking to those who work with and/or live with the victim. Confirming the TBI patient's harms and losses with these "before and after" witnesses is critical to give the jury or insurer a fuller picture of the damages.

CALCULATING PAIN AND SUFFERING DAMAGES

Factors to consider in working out TBI pain and suffering include:

- The severity of your injury;
- The length of pain and suffering;
- The degree of permanence of your injury;
- How the TBI affected your quality of life, including relationships with family and friends;
- How your personality changed due to the TBI;

- Ongoing psychological issues like depression and PTSD; and
- Embarrassment, inconvenience, and mental anguish.

CHAPTER 11

QUESTIONS TO ASK YOUR TBI ATTORNEY

If you were caused to have a TBI because of the fault of another, like in a truck wreck, you should see if a TBI attorney can help. A traumatic head injury can change your life overnight. It is natural for people who've suffered head injuries to have lots of questions for their attorneys.

Litigation is a complicated process that is not to be undertaken lightly. It's important to find the right TBI lawyer. While many lawyers take on car accident claims, fewer have the know-how and resources to handle traumatic brain injury cases properly.

Here are the top ten questions to ask your TBI attorney:

1. Have you handled traumatic brain injury cases in the past?
2. Are you familiar with the medicine involved in a TBI?
3. Are you familiar with TBI testing and evidence gathering?
4. Do other attorneys refer brain injury clients to you?
5. What significant challenges am I likely to face during the case?
6. What should I be documenting about my injury?
7. How often will you be in touch with me?

8. Do you have an adequate team of TBI experts, lawyers, and paralegals to efficiently handle my case?
9. Do you have the money to get me an expert evaluation by a TBI doctor and specialist?

TBI cases should be handled differently than other personal injury cases because of the complexity of TBI medicines and the expense of putting on cases properly. The value of the harms and losses in TBI cases can be large, and this means insurers try even harder to dispute brain injury claims. Your lawyer must be prepared to devote the time and resources to your case. Look into the lawyer's past TBI cases and client reviews. Find out if he or she is a "go-to" person to whom other lawyers refer brain injury cases.

CHAPTER 12

SUPPORT FOR FAMILIES AND CAREGIVERS

People who suffer from traumatic brain injuries, and their families, often feel isolated and alone. However, there is a network of help available in Virginia and nationwide.

John Cooper is a member of the Brain Injury Association of Virginia (BIAV) and a sponsor of their programming. BIAV is part of the Brain Injury Association of America. It provides help for TBI sufferers as well as educational resources and conferences for doctors and other professionals. It even hosts an annual summer camp for people with TBIs.

BIAV is committed to raising the profiles of people with TBIs and ensuring they are not overlooked, since they often look like everyone else.

The Brain Injury Association of Virginia's website is www.biav.net/. It lists support groups in Hampton Roads and Richmond, Virginia.

Here, John Cooper presents a check to the Brain Injury Association of Virginia. Cooper Hurley Injury Lawyers is proud to regularly donate to BIAV and many other organizations throughout Hampton Roads.

NATIONAL SUPPORT AND INFORMATION GROUPS

The Brain Injury Association of America's website is www.biausa.org/. It lists support groups in your area.

The Family Caregiver Alliance is a secure, online service for information, support, and resources for family caregivers of adults with chronic physical or cognitive conditions such as Alzheimer's, strokes, Parkinson's, and other illnesses. See www.caregiver.org or call 800-445-8106 for more information.

BrainLine is another useful online resource for TBI sufferers. BrainLine provides valuable resources for veterans with TBIs, children, and others. See www.brainline.org for more information.

Virginia Commonwealth University has a National Resource Center for Traumatic Brain Injury. See www.tbinrc.com/brain-injury-association-support-groups-survivors for more information.

CHAPTER 13

COOPER HURLEY INJURY LAWYERS TBI CASE RESULTS

The attorneys at Cooper Hurley Injury Lawyers have helped many clients who've suffered traumatic brain injuries in truck crashes and other accidents. For example, a young adult client of ours with a mild TBI and PTSD recently got $5.8 million as a recovery. His college and career plans were drastically affected. No past case, though, is predictive of a future result. Some of our other successes include the following:

VIRGINIA
LAWYERS WEEKLY

Vol. 31, No. 24 valawyersweekly.com

VERDICTS & SETTLEMENTS

Woman hit by truck while changing flat tire

$1,150,000 Settlement


COOPER


HURLEY

Plaintiff is a 60-year-old grandmother who was struck outside her vehicle in the early morning by a commercial truck in Hampton Roads. The injuries included non-surgical fractures of the left leg, a broken bone in her neck and a broken nose. The pictures of plaintiff's swollen and bloody face made the plaintiff's claim of traumatic brain injury more understandable. CT testing also showed bleeding on the brain at the hospital emergency room. The bulk of the past medical bills of $100,000.00 were for an inpatient stay at Sentara Norfolk General Hospital and a rehabilitation facility.

Although the defense contested the traumatic brain injury as a permanent impairment, the severity of the injuries could not be denied. Plaintiff received social security as she was no longer able to return to her warehouse foreman job earning $25,000.00 annually.

Type of action: Truck wreck/pedestrian injury

Injuries alleged: Traumatic brain injury, non-surgical leg fractures, broken bone in her neck, broken nose

Verdict or settlement: Settlement

Amount: $1,150,000

Attorneys for plaintiff: John Cooper and Jim Hurley, Norfolk

Contributory negligence allegations included that the plaintiff was changing a flat tire in the right lane of a major roadway at the time that she was hit, rather than pulling off the road, and the poor condition of the vehicle. Plaintiff's counsel's strategy included keeping the case in a favorable venue. The trucker's insomnia put the defendant in a bad light and explained his failure to see the flashers on the broken down van.

In addition to past lost wages and medical bills, the plaintiff had a work-up about future medical costs, most of which were related to in-home care for traumatic brain injury symptoms. The high-dollar life care plan was seriously challenged by the defendants. A Medicare set-aside was required.

The case settled at a lengthy mediation. [17-T-163]

VIRGINIA
LAWYERS WEEKLY

VERDICTS & SETTLEMENTS

Mechanic suffered hearing loss and tinnitus

$1.15 Million Settlement


COOPER


HAJEK

Plaintiff, a heavy equipment mechanic, suffered permanent hearing loss and tinnitus with continuing balance problems and falls. As a result of the injury and subsequent falls, plaintiff developed mild traumatic brain injury symptoms and could not return to his old job. His quality of life has been significantly diminished, especially his raising two pre-teen children as the sole custodial parent.

The primary disputes were over medical causation and alleged lack of mitigation of damages by not returning to some kind of work. In the months before trial, an endolymphatic sac surgery was performed to try to lessen the vestibular problems. Though apparently successful, the operation would not likely alleviate all balance issues, according to the ear, nose and throat surgeon.

[19-T-030]

Type of action: Industrial Injury

Injuries alleged: Acoustic trauma, permanent hearing loss, mild traumatic brain injury, Meniere's disease

Name of mediator: Hon. Diane M. Strickland (Ret.)

Date resolved: Feb. 14, 2019

Special damages: Loss of a $57,000.00/year job to a 46 year old

Verdict or settlement: Settlement

Amount: $1,150,000.00

Attorneys for plaintiff: John M. Cooper, Norfolk; Francis Hajek, Charlottesville

VIRGINIA
LAWYERS WEEKLY

VERDICTS & SETTLEMENTS

Plaintiff injured by falling window valance in hotel room

$400,000 Settlement

Plaintiff, a 55-year-old flight attendant trainee, was a guest of the defendant hotel when a 40-pound wood valance and drapes in her room fell upon her. Plaintiff alleged that the heavy wood valance was improperly secured into the drywall only, rather than using anchors or fastening the valance directly into the studs behind the drywall. Among several liability experts for the plaintiff was a hotel management expert, who was prepared to opine that the improperly installed valance should have been found by routine inspection required of innkeepers. Liability was disputed by the defendant saying that no notice was provable as a contractor improperly installed the valance, not the hotel.

The plaintiff suffered a concussion with injuries to her neck, knee and shoulder. Her orthopedic doctors in Raleigh, where the plaintiff lived, all treated these injuries as accident-related under workers' compensation. The plaintiff required surgery to repair injury to her anterior cruciate ligament and a partial tear of the lateral meniscus. She also required surgeries to address a partial tear of the right rotator cuff, and also to treat her neck injury at C5-6. A permanent impairment of 15 percent of the leg, 10 percent of the upper extremity, and 10 percent of the neck were calculated by the plaintiff's physicians. Damages were highly contested by the defendant. Defendant's position, following a record review, was that the plaintiff sustained no specific definable injury as a result of the valance collapse. Problematically for the plaintiff, there also were references in the records to pre-existing conditions and potential prior injuries.


COOPER


O'MARA


COCHRAN

Complicating resolution of the case was a substantial North Carolina Workers' Compensation lien. Plaintiff's counsel negotiated a substantial reduction of the lien, which was passed along to the plaintiff greatly increasing her total recovery. [14-T-062]

Type of action: Personal injury-premises liability	Amount: $400,000 (plus defense to pay mediation costs)
Injuries alleged: Concussion, shoulder injury, knee injury, neck injury	Attorneys for plaintiff: John M. Cooper and Bill O'Mara, Norfolk; Ben Cochran, Raleigh, N.C.
Court: Virginia Beach Circuit Court	Plaintiff's experts: R. Bitton Colbert, CHA, hotel consultant; Sheldon J. Leavitt, AIA, PE, engineering consultant
Mediator: Thomas S. Shadrick	
Date resolved: April 25, 2014	Defendant's expert: David G. Goss, M.D., medical records review
Special damages: $183,000 in contested past medicals	
Verdict or settlement: Settlement	

1. Young Man Who Suffered a Brain Injury in an Intersection Crash Obtained $815,000

A pick-up truck driver ran a red light at the intersection of Independence Boulevard and Virginia Beach Boulevard in Virginia Beach. He hit a car driven by a 21-year-old man from the Eastern Shore of Virginia, who sustained a concussion that left him dazed at the scene of the accident. It was not clear that any loss of consciousness occurred.

The primary injury to the young man was a permanent traumatic brain injury that caused him to suffer almost constant headaches as well as cognitive impairments and anxiety.

The accident dramatically impacted the young man's career plans. It meant he was no longer able to pursue a planned career as a truck driver, which he was just starting. Instead, he took a job as a store clerk with a kind employer who accommodated his neuropsychological challenges. Due to his injuries, the client's earning capacity as a worker was reduced by $10,000 to $20,000 a year, according to a vocational expert hired by Cooper Hurley Injury Lawyers.

Questions about the nature and extent of the young man's closed head injury played a pivotal role in the attack by the insurance companies who defended the pick-up truck driver. Brain injuries are often permanent and can require lifelong care. Doctors hired by the insurance company admitted that our client had a concussion but said that it must have healed within six weeks of the accident. Hired guns for the defense claimed any ongoing symptoms were from malingering, exaggeration, and faking. Experts hired by Cooper Hurley Injury Lawyers, however, maintained the effects of the injuries were real, ongoing, and would significantly impact our client's future.

The family of the injured man, including his mother and stepfather, as well as his employer, would have also been called to explain the permanent problems to the jury. The crux of a traumatic brain injury case is often the credibility of the claimant. We established that our client was a formerly happy and healthy guy who now struggles to live a productive life, even just to hold down a job.

The available insurance limited the total recovery.

2. Tow Truck Driver Received $895,000 After Sustaining a Mild Traumatic Brain Injury

A tow truck driver from Portsmouth, Virginia was working on the 1-664 Monitor-Merrimac Memorial Bridge-Tunnel (MMMBT) between Suffolk and Newport News when he was hurt in a wreck. While he was helping a broken-down motorist on the bridge, another car crashed into him as he tried to secure a tow.

The impact of the crash caused a concussion and other physical injuries.

The tow truck driver was left in a state of delirium at the accident scene. He remained dazed and confused for some time after the wreck. He was later diagnosed with a concussion, a mild traumatic brain injury.

Lawyers for the defense insurance company claimed that our client only had post-traumatic stress disorder and had not suffered a traumatic brain injury.

A mild TBI and PTSD can cause long-lasting neurocognitive effects. At the time of settlement, our client struggled to

concentrate and faced a daily battle to get back to his prior quality of life as a family man.

3. $675,000 Settlement for a Woman Rear-Ended by a Dump Truck in Virginia Beach

A single mother was injured when a dump truck rear-ended her car on a major road in Virginia Beach. The truck was operated by a driver for a construction materials company. Typically, commercial vehicles have larger insurance policy limits than most family-owned cars.

The woman suffered a direct blow on the head and received a cut on her scalp. She was taken to the emergency room, where she was diagnosed with a concussion. Her car was seriously damaged when it was hit by the heavy truck. Her driver's seat was broken, and the truck intruded into the back passenger area of the small sedan.

Although CT scans came back negative, the woman developed cognitive deficits as a result of a mild traumatic brain injury she suffered. She was able to return to work without a loss of income but felt her performance suffered for a long time after the wreck.

Defense medical experts hired by the lawyers for the dump truck driver and his company challenged the extent and ongoing nature of the woman's symptoms. They argued that most minor concussions heal within a short time and do not cause continuing problems.

Doctors hired by the defense team also argued our client only suffered from psychological harm, as opposed to an actual brain injury.

A neurologist hired by the defense team claimed that depression or PTSD is a less serious diagnosis than permanent brain injury, so if the injured person "just" had PTSD, it was not much to worry about. The attorneys from Cooper Hurley Injury Lawyers maintained that the women sustained both psychological harm and ongoing cognitive deficits consistent with a mild traumatic brain injury.

CHAPTER 14
CLIENT TESTIMONIALS

The following is a sample of reviews left by satisfied clients of Cooper Hurley Injury Lawyers.

"They were so helpful in every step of the process and made sure we got the help that we needed. I know I will come back if I ever need them again. Great team!" - **Melissa M.**

"After my accident heading towards the Norfolk Naval Base, I called Cooper Hurley Injury Lawyers. It never felt like a job working with them; they always kept my best interests at heart. I like working with honest people and that was the best part of working with Jim and Tara. I would recommend them to anyone. Job well done." - **Gilbert G.**

"They are the best. I've not found a better law firm in Hampton Roads than Cooper Hurley. They are very thorough and attentive to your case as well as great in following up to ensure you're kept apprised with updates. I would highly recommend them." - **Gerry N**.

"Cooper Hurley Injury Lawyers were very diligent and sought nothing but the best service for my friend and I when we had an accident in Norfolk. They guided us through the twists and turns of being in an accident and gave us an awesome settlement. Bill was awesome." - **Jose B.**

"They were very professional and direct. They let us know what was happening every step of the way and made sure we were comfortable the entire time." - **Joe T.**

"I was leaving a volunteer event last year when an 18-wheeler hit my car while I was 3 months pregnant. Immediately following the accident, I contacted Cooper Hurley. Jim Hurley assisted me in starting my case. They followed up with me to make sure I was still mentally and physically well. The most important thing I love about this law firm is that they cared more about me and focused on my case. They never gave me the run-around, tried to pass my case off or turned me down. I highly recommend you contact Cooper Hurley whenever you get into an accident whether it's immediately or a few days after everything is processed mentally." - **Chiquita P.**

"I hired Cooper Hurley Injury Lawyers after I fell in front of a store. They took on my case when no other Norfolk injury firm would. They were very pleasant to deal with. They kept me informed along the way." - **Yvonne W.**

"I've known John Cooper for over 25 years. He's a very caring, honorable and helpful person. If you are injured or in need of an attorney, I'd highly recommend you consider talking to him about your case." - **Donald F.**

"Cooper Hurley is more than an injury law firm, it is an extended family that has compassion and understands the effects of sudden life-altering tragedy. When I could barely put one foot before the other after the untimely loss of our dear mom and horrific injury to our sister, due to a negligent driver, Cooper Hurley was there to support and guide my family. Jim Hurley, Bill O'Mara and Nicole McLean have become life-long friends and extended family through this unfortunate event. I

am forever grateful for having the experienced guidance and seeking of justice by this skilled group of professionals. Every staff member at Cooper Hurley has been simply amazing. We love Cooper Hurley." - **Ernest E.**

CONCLUSION

Brain injuries are devastating to families and complicated to litigate. The brain controls all the functions of the body. Even minor damage to the brain can be life-altering. While most people recover from mild brain injuries, you should not assume you will make a complete recovery. Neurocognitive and personality changes from a TBI can last a lifetime.

Brain injuries are invisible to casual observers. Most TBI sufferers look and sound like everybody else. Sadly, they are often shunned by friends and discriminated against in the workplace. Help from an experienced TBI attorney can make it easier for you and your family to address your injury while the attorney gets you the compensation you deserve.

We hope this book has helped you understand some of the issues involved in traumatic brain injury medicine and litigation. We also seek through this book to help put family members and caregivers in touch with the resources they need. This book is not a definitive guide to traumatic brain injury, and nothing within these chapters constitutes legal advice. If you or a family member believes you suffered a traumatic brain injury due to the fault of another person or company, please call Cooper Hurley Injury Lawyers at (757) 333-3333 or visit our website: cooperhurley.com.

ABOUT COOPER HURLEY INJURY LAWYERS

Cooper Hurley Injury Lawyers is a fast-growing personal injury law firm based in Norfolk, Virginia. Our attorneys have decades of experience in representing people hurt in car, truck, motorcycle, and other serious accidents through no fault of their own. We fight tirelessly to secure the fair compensation that our traumatic brain injury clients deserve, and we do not ever represent insurance companies.

Our award-winning firm was founded in 2011 when veteran personal injury lawyers John Cooper and Jim Hurley joined forces. The partners already had long and impressive records of representing accident and traumatic brain injury victims in the Hampton Roads area and further afield. Attorney Bill O'Mara became partner in 2017, and attorney Griffin O'Hanlon became partner in 2020. Together, the partners have led a dedicated group of attorneys and staff in winning millions for our clients.

Cooper Hurley Injury Lawyers is headquartered in downtown Norfolk close to the Circuit Court. We retain our vision of treating clients like family members and have won numerous local and national awards for our service and results. Although traumatic brain injury law is a fast-changing area, the need to provide top-notch legal service and protect those who are hurt from insurance company tricks remains constant.

Each year, we help hundreds of people who've been hurt in accidents, including many traumatic brain injury victims. If you or a family member believes you suffered a traumatic brain injury due to the fault of another person or company, please call us for a free consultation. Our personal injury lawyers work on a contingency basis, which means you don't pay us unless we secure a settlement or trial verdict on your behalf.

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Chesapeake, VA
Hampton, VA
Newport News, VA
Suffolk, VA
Portsmouth, VA
Eastern Shore, VA

JIM HURLEY

Jim Hurley has represented personal injury clients for nearly three decades. He limits his practice almost exclusively to helping clients after they were injured in car, truck, and motorcycle accidents, including many brain injury sufferers. He has tried approximately 100 jury trials and been involved in thousands of litigation matters.

After receiving his undergraduate degree from the University of Arizona in Tucson, Jim received his law degree from Thomas M. Cooley School of Law in Lansing, Michigan. He is a member of the American Association for Justice, American Bar Association, Virginia Trial Lawyers Association, Virginia State Bar Association, and the Norfolk & Portsmouth Bar Association.

Jim has received numerous honors for his work. He is recognized by Virginia Super Lawyers, a designation attained by less than five percent of the Commonwealth's attorneys. He is AV Preeminent™ Peer Review Rated by Martindale-Hubbell®, the highest rating given, for his practice of law. He is also ranked 10 out of 10 ("Superb") by Avvo, a national lawyer assessment

service. As one of the founding partners of Cooper Hurley Injury Lawyers, Jim's dedication and leadership has also helped the firm to win gold for "Best Law Firm in Norfolk and Virginia Beach" in Virginian-Pilot's 2020 Best of Contest.

Jim is proud that his extensive experience enables him to get the "best results possible" for his clients. "At Cooper Hurley Injury Lawyers, our job is to take care of all of our clients' legal needs so they can just focus on getting better," Jim says.

Jim has won millions for traumatic brain injury victims, including:

- **$1.15 million settlement** for a woman hit by a truck while changing a flat tire. The plaintiff suffered bleeding on the brain at the hospital emergency room along with several other injuries.
- **$815,000 settlement** for a young man hit by a red-light runner in Virginia Beach. The plaintiff suffered a permanent traumatic brain injury that caused him to suffer almost constant headaches as well as cognitive impairments and anxiety.

BILL O'MARA

Bill O'Mara attended Dartmouth College and Washington and Lee University Law School. He started his legal career in 2008 after returning to his hometown of Chesapeake, Virginia, where his family has deep ties. He has extensive courtroom and trial experience, including contested trials before judges and juries across Hampton Roads.

After joining Cooper Hurley Injury Lawyers as an associate attorney in 2014, Bill dedicated his entire practice to helping injured people and has represented hundreds of people after being hurt in car, truck, motorcycle, and other serious accidents. He became partner in 2017 and continues his practice while helping to lead and grow the firm.

Bill is an active member of the Virginia Beach Bar Association, the Norfolk & Portsmouth Bar Association, and the American Association for Justice. He's been selected as a Super Lawyers Rising Star for several years, a rating earned by only 2.5 percent of young attorneys. He's also ranked in The National Trial Lawyers: Top 100 and was voted 2020 Top Lawyer by Coastal

Virginia Magazine and CoVaBIZ. Bill is ranked 10 out of 10 ("Superb") by Avvo, a national lawyer assessment service.

Bill has won significant settlements for traumatic brain injury victims, including:

- **$400,000 settlement** for a flight attendant injured by falling window valance in a hotel room. The plaintiff suffered a concussion among other injuries.

GRIFFIN O'HANLON

Griffin O'Hanlon attended Virginia Tech and obtained his J.D. from the Saint Louis University School of Law with a concentration in civil litigation. Griffin returned to his hometown of Hampton Roads and practiced criminal law at the Norfolk Public Defender's Office and a local private firm before joining Cooper Hurley Injury Lawyers as an attorney 2015. In January 2020, Griffin became the fourth partner of the firm. He has extensive in-court litigation experience and devotes his entire practice to helping injured people, including traumatic brain injury sufferers.

Griffin is a member of the Virginia Trial Lawyers Association, the American Association of Justice, the Norfolk & Portsmouth Bar Association, and the Virginia Beach Bar Association. He was selected as a Super Lawyers Rising Star in 2019.

Griffin has won significant settlements for traumatic brain injury victims, including:

- **$150,000 settlement** for a car accident victim who suffered a mild traumatic brain injury after a rear-end accident at a stoplight.

ADDITIONAL RESOURCES FROM COOPER HURLEY INJURY LAWYERS

The Best Book About Virginia Car Accidents & Injuries

Getting into a car wreck can be a traumatizing experience. You may need information regarding what to do, when to get help, and how to deal with the insurance agencies. Our book, "The Best Book About Virginia Car Accidents & Injuries," provides the public with concrete steps to take after an accident. Request your free copy at cooperhurley.com/free-book

The 5 Dirty Tricks Used by Car Insurance Companies

In this FREE report, we reveal five sneaky tactics insurance companies use to prevent you from getting what you deserve after an accident. Using a real case study and real emails from a real insurance company, we want to show you the truth about how injury claims like yours are typically handled. Get instant access to the report at cooperhurley.com/free-report

After the Accident- A Cooper Hurley Injury Lawyers Podcast

After being involved in an accident, you are overwhelmed with questions of what to do next. Tune in to hear experienced attorneys share need to know information you should know before you hire an attorney or talk to the insurance company. Listen now at cooperhurley.com/podcasts

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Traumatic Brain Injury Toolkit

EVERYTHING A CLIENT NEEDS TO KNOW
AFTER SUFFERING A ***TRAUMATIC BRAIN INJURY***

If you've suffered a traumatic brain injury (TBI) because of the carelessness of another, you may not know where to turn. An experienced brain injury lawyer can help you avoid falling into the traps of the insurance companies, allowing you to recover the most for your injuries.

Injury lawyers John Cooper, Jim Hurley, Bill O'Mara, and Griffin O'Hanlon have helped injured people in brain injury and other personal injury accidents for more than 80 years combined.

Cooper Hurley Injury Lawyers is located in Norfolk, VA, with client meeting locations in Virginia Beach, Hampton, Chesapeake, Portsmouth, Suffolk, Newport News and the Eastern Shore of Virginia. We provide a high level of personal service, including 24/7 availability, as well as hospital visits to our clients. Our brain injury attorneys will do what it takes to get you the compensation you deserve for your brain injury case. Call John Cooper, Jim Hurley, Bill O'Mara, or Griffin O'Hanlon at 757-333-3333. They will be happy to answer your questions and help you during this difficult time in your life.

GRIFFIN O'HANLON, JIM HURLEY, JOHN COOPER & BILL O'MARA

(Pictured left to right)

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