

**Presented:**  
2014 The Car Crash Seminar  
July 31 – August 1, 2014  
Austin, Texas

## **Damages**

**Jorge A. Herrera**

**JORGE A. HERRERA**  
The Herrera Law Firm  
111 Soledad Street, 19th Floor  
San Antonio, TX 78205  
(210) 224-1054  
jherrera@herreralaw.com

### **BIOGRAPHICAL INFORMATION**

Jorge Herrera was born and raised in San Antonio, Texas.

In May 2005, Jorge graduated from The University of Texas School of Law where he was a member of the Board of Advocates, Texas Hispanic Journal of Law and Policy, and a student member of the Association of Trial Lawyers of America and the Texas Trial Lawyers Association.

In May 2001, Mr. Herrera graduated from Columbia University with a Bachelor of Arts in Political Science and received the distinguished Charles M. Rolker Prize for leadership. He also served his alma mater as the founder of the Latino Student Peer Mentor Program, Chair of the Minority Recruitment Committee, Board of the Chicano Caucus, Radio DJ for Furia Mexicana radio show, and as Senior Class President

Jorge is now an attorney at The Herrera Law Firm where he practices civil and business litigation. In 2012, Jorge recovered over \$10,000,000 on behalf of his clients. Before becoming an attorney, Jorge held numerous prestigious posts including: worked as assistant to National Finance Co-Chair of the Kerry/Edwards national campaign, and later was promoted to become the Texas State Director for the Democratic National Committee. Jorge also received the Congressional Hispanic Caucus Institute Fellowship (CHCI) where he served as a Public Policy Fellow with the Democratic Senate Steering Committee and Congressman Gene Green. Finally, in 1997, Jorge had the distinct honor of serving as a White House Intern.

Mr. Herrera is a member of the American Association for Justice (2012-2013 National Board of Governors and 2010-2013 Texas Delegate), The Texas Trial Lawyers Association (2013 Executive Committee, Board of Advocates Chair 2011; Immediate Past Chair, 2012; Diversity Committee), The San Antonio Trial Lawyers Association, The San Antonio Mexican American Bar Association, The San Antonio Young Lawyers Association, and The National Hispanic Bar Association. Recently, Jorge was nominated to serve as an Executive Committee Member of the National Latino Trial Lawyers Association, was recently elected a Fellow of the Texas Bar Foundation, and was named as a 2012 Rising Star by Super Lawyers Magazine. Jorge also speaks at numerous CLE events throughout the country for the Texas Trial Lawyers Association, American Association of Justice and the Texas Bar Association.

Additionally, Jorge has served on various community and non-for-profit boards, including Vision San Antonio Executive Board, the Mount Sacred Heart Executive Board, the Familia Conexion Initiative Council, Chairman of the South Texas Hispanic Fund for the San Antonio Area Foundation, and as a founding member of the Texas Latino Leadership PAC. As part of his responsibilities with the South Texas Hispanic Fund, Mr. Herrera has been the Founder and Chairman of the RingSide SA Gala for three years. The inaugural event raised approximately \$100,000 for local charities. Mr. Herrera currently also serves on the Executive Committee of the San Antonio Hispanic Chamber of Commerce as General Counsel (2009-current) and on the Advisory Board for Vantage Bank. Jorge additionally serves on the executive national board of AVANCE, INC., which works to strengthen families in at-risk communities through effective parent education and support programs

Jorge has received numerous awards and accolades, including Rising Star in the Legal Community with Scene in SA Magazine, a biographical article in NSide Magazine, and the Reich Chandler Award from the Texas Trial Lawyers Association.

Jorge is married to Victoria Moreno Herrera and they have three children, Ilan Francisco Herrera (6), Alejandra Gloria Herrera (4), Carolina Alia Herrera (11 months). With all of Jorge's work and charitable contributions, what he is most proud of is his coaching of all of his kids' sports (soccer, basketball and t-ball).

## Table of Contents

<b>I. Introduction</b> .....	1
1. Past and future medical bills .....	1
2. Past lost earnings.....	1
3. Loss of earning capacity .....	1
4. Past and future pain and suffering .....	2
5. Past and future mental anguish .....	2
6. Past and future physical impairment.....	3
7. Physical disfigurement.....	3
8. Loss of support, consortium, and household services.....	4
9. Property damage to the vehicle.....	4
<b>II. Conclusion</b> .....	4

## Damages Recoverable in a Car Wreck Case

### I. Introduction

A personal injury lawsuit may be filed on behalf of a client following a car wreck. In a typical car wreck case there are a number of damages that an attorney may recover for their client. These damages often depend on the severity of the case. The potential damages recoverable can include the following: (1) past and future medical bills, (2) past lost earnings, (3) future loss of earning capacity, (4) past and future pain and suffering, (5) past and future mental anguish, (6) past and future physical impairment, (7) physical disfigurement, (8) loss of support, consortium, and household services, and (9) property damage to the vehicle.

#### 1. Past and future medical bills

Texas law allows an injured party to recover damages for past medical expenses when the injury was proximately caused by the negligence of another.

- In order to qualify for these damages, the plaintiff must show that the medical treatment was necessary and the charges/bills for the medical treatment were reasonable and necessary for the injuries resulting from the accident. *See Smith v. Southwestern Bell Telephone Co.*, 101 S.W.3d 698, 702 (Tex. App.—Fort Worth 2003, n.p.h.).
- If the plaintiff can show—through competent evidence—that future medical treatment will be required as a result of the injuries, then an award for future medical bills is possible. Again, the injuries requiring future medical care must have resulted from the accident in question and proximately caused by the negligence of another. *See id.* Texas follows the *reasonable probability* rule for future damages related to personal injuries. *Bell v. Castro*, 2012 WL 5874322, at 6 (Tex. App.—San Antonio 2012, no pet.) (citing *City of San Antonio v. Vela*, 762 S.W.2d 314, 320 (Tex. App.—San Antonio 1988, writ denied) (emphasis added)).

- Past and future medical expenses/bills must be reasonable and necessary as a result of the injuries from the accident. *Jackson v. Gutierrez*, 77 S.W.3d 898, 902 (Tex. App.—Houston [14th Dist.] 2002). This reasonable and necessary determination is made either through presentation of expert testimony, or through submission of affidavits in compliance with § 18.001 of the Texas Civil Practice and Remedies Code. *Id.*; *see also* Tex. Civ. Prac. & Rem. Code § 18.001 (Vernon 1997).

#### 2. Past lost earnings

A plaintiff is entitled to damages for past lost earnings or wages if they can prove—through competent evidence—that they were unable to work because of the injuries sustained in an accident caused by the negligence of another.

- Proof of this loss is most effectively accomplished through testimony and records from the plaintiff's medical providers. A plaintiff can also offer evidence of the average monthly amount of wages they earned prior to the accident, and then calculate the wages lost based on the time missed from work.
- Plaintiff must show a necessary causal nexus between the accident and the loss of earnings or wages. *Jackson*, 77 S.W.3d at 902; *see also Morgan v. Compugraphic Corp.*, 675 S.W.2d 729, 731 – 32 (Tex. 1984) (finding that there was competent evidence to satisfy the causal nexus between the injury and award for damages related to an accident/injury at work).

#### 3. Loss of earning capacity

A plaintiff can also seek damages for the future loss of earning capacity they may experience as a result of the accident caused by the negligence of another. Testimony and records from medical providers showing the permanence of the injuries and the likelihood that this will lead to an inability to work at their previous job or any job help establish

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Damages

Also available as part of the eCourse

[Car Crash Cases: Damages; plus Subrogation and Liens](#)

First appeared as part of the conference materials for the  
2014 The Car Crash Seminar session

"Damages"