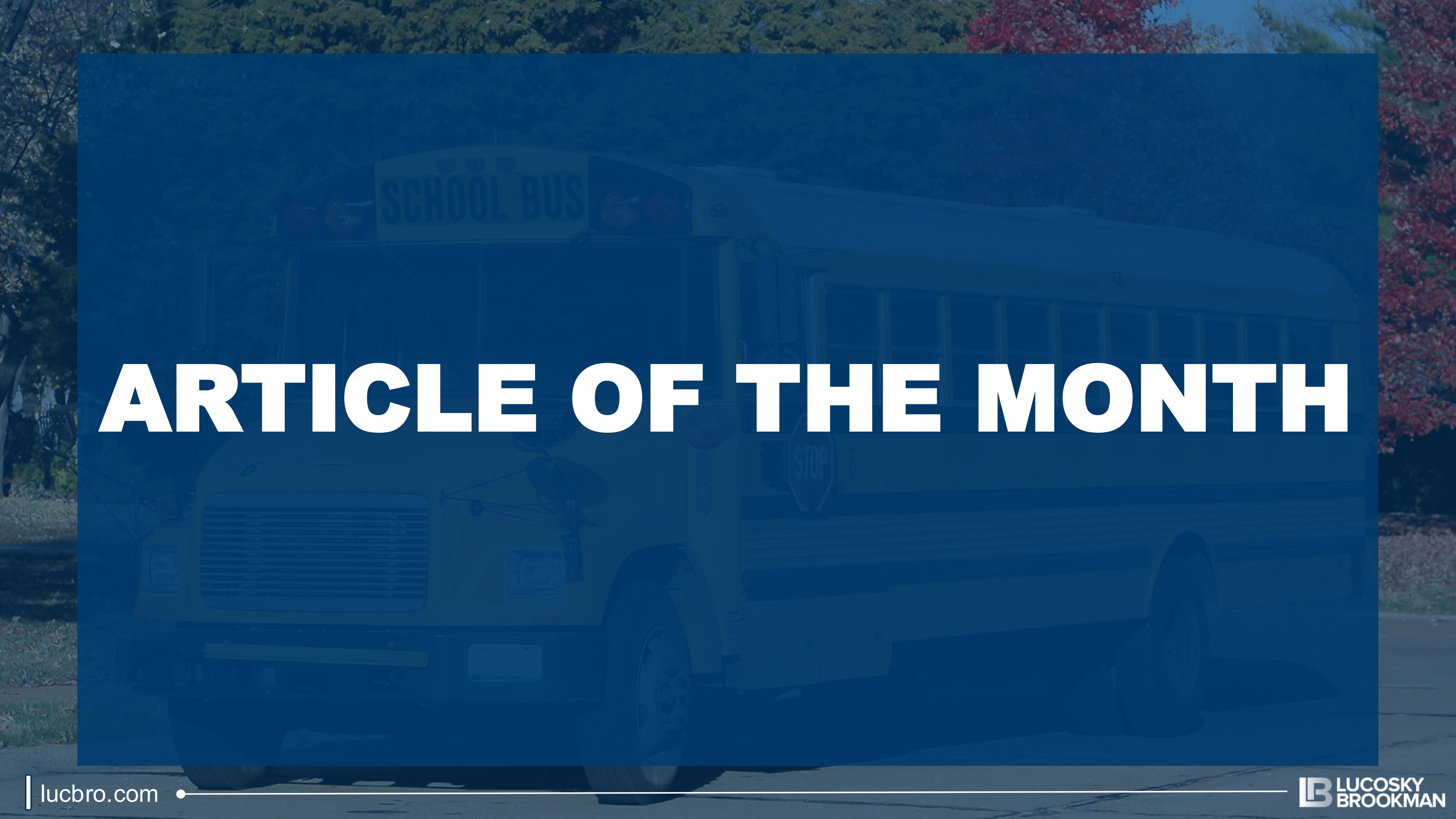

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Final Reforms to New York Insurance Law Changes Significant New York Court of Appeals Case Precedent in Win for Transportation Defendants

Plaintiff Attorneys' Pre-Discovery Summary Judgment Strategy No Longer Viable?

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The New York Court of Appeals dramatically shifted the landscape of New York Personal Injury Litigation when they decided *Rodriguez v. City of New York*, 31 N.Y.3d 312 (2018). This decision held that a plaintiff was no longer required to prove they were free of fault to obtain summary judgment. This has resulted in a new strategy of early summary judgment motions to create 9% post-judgment interest at the onset of a litigation when a defendant cannot create an issue of fact that they can be found non-negligent. This has been a hammer at the disposal of plaintiffs who often file summary judgment motions early in motor vehicle cases and then utilize the threat of interest as leverage in negotiations and at mediation.

It appears that this particular gravy train for plaintiffs is about to slow down significantly.

New York State's enacted budgetary language for the 2027 Fiscal Year is set to amend New York State Insurance Law § 5104(a). The statute is now set to read as follows: "[n]o liability for non-economic loss shall be fixed unless and until the trier of fact has determined the existence of a serious injury." There has also been a rash of summary judgment motions on the issue of serious injury filed at the onset of cases that are granted before any discovery. The amended version of § 5104(a) goes on to state that the issue of whether a plaintiff suffered a serious injury entitling them to pain and suffering damages will not be determined "until the trier of fact has determined the party or parties at fault."

The prime example is the classic slow-speed, rear-end accident with disputed soft tissue injury claims where a plaintiff undergoes excessive and often unnecessary neck and back treatment ultimately resulting in discectomy and fusion procedures in the pursuit of a big-dollar settlement. Now plaintiffs are required to prove their “serious injury” under NYS Ins. Law § 5102 before the interest clock starts ticking.

There will likely be significant litigation on the applicability of this new language. As written, it applies to cases that are newly filed, but there will be an argument that this is a substantive due process issue and cannot impact losses or accidents that occurred prior to the late May 2026 enact date. However, if that issue shakes out between cases that accrued before the budget was adopted but were not filed, this change is a massive shift in new litigations that defendants can utilize to their advantage early in litigations. Defendants in cases with likely liability but questionable damages will no longer be regularly confronted with compounding interest during years of litigation and discovery.

Pure Comparative Negligence is No More, but the Vagueness of the Serious Injury Threshold Law Remains Intact

There was hope that New York Insurance Law Section 5102(d) would be significantly curtailed and require more objective, verifiable medical evidence to establish a serious injury that warranted pain and suffering damages. Unfortunately, the statute was largely left alone. While the former “90/180 day” provision – allowing for a serious injury if the accident “prevents the injured person from performing substantially all of the material acts which constitute such person's usual and customary daily activities for not less than ninety days during the one hundred eighty days immediately following the occurrence of the injury or impairment” – was eliminated, this change will not impact the great majority of personal injury transportation cases.

Despite what some may be arguing regarding the requirement of “objective” evidence, this was always required to meet the definition under § 5102(d) to prove a “significant limitation of use of a body function or system.” Plaintiffs always sought to prove that portion of the statute through the findings, reports, and testimony of treating physicians, surgeons, and radiologists, and that process will not change. It will still be an issue of credibility to be determined by a jury when plaintiff’s doctors claim the injuries are significant, permanent, and causally-related and defense experts issue the opposing argument. This blurred line where non-serious claimed ‘herniations’ and injection ‘procedures’ can meet a plaintiff’s burden to get the question of a serious injury past the summary judgment stage will not change.

The good news, however, is that pure comparative negligence is no longer the law moving forward in newly-filed actions in New York State. Previously, if a plaintiff is 90% responsible for their *own* accident, that plaintiff can still recover for 10% of their damages. Many states modify this so that if a plaintiff is found 51% responsible, they do not recover any damages. Bringing this approach to New York creates significant leverage in split-responsibility accidents where plaintiff attorneys now cannot rely on getting 25-50% at worst but have a real risk of zero recovery. It should be noted that, from a practical standpoint, this creates many situations where juries ultimately split liability 50/50 because they are specifically instructed by the judge that if they find the plaintiff 51% responsible, plaintiff recovers nothing. This is nevertheless a strong defense development.

The "One Percent" Rule Endures as a Significant Driver of Increased Exposure

The Governor's budget proposal sought to address the rules as to Joint and Several Liability, in its purest form, means that all defendants are jointly and severally liable for all of a plaintiff's damages regardless of actual allocation of fault. New York currently follows a modified approach. In *non*-motor vehicle cases, if a defendant is less than 50% liable, while they are responsible for all economic damages, the defendant would only be responsible for their equitable fault for non-economic damages.

However, the strength of the plaintiff's bar in the motor vehicle and transportation arena led to an exception in motor vehicle matters, commonly referred to as the "1% rule." This rule means that if a plaintiff has a $1,000,000 non-economic damages claim, and there are two defendants, one with millions of insurance, one with minimum limits, and the adequately-insured defendant is found only *one-percent* responsible for the accident and the other defendant with a $25,000 policy is found 99% responsible, the first defendant is required to pay $975,000 rather than the $10,000 that would be their equitable fault.

Despite attempts, this law did not change and the "1% rule" will remain a thorn in the side of transportation defendants for the foreseeable future.

Additional Changes in the Law and What's Next?

The law did also come with some smaller changes that, while helpful, will not impact the large majority of cases:

- Those involved in illegality (driving without insurance, driving while intoxicated, or in the commission of a felony while operating) will be limited to a maximum recovery of $100,000;
- Those involved in broader fraud conspiracies can be held criminally responsible – not just those actually operating a vehicle.

We are encouraged that New York has reacted to the publicizing of personal injury fraud and rising litigation costs and damages exposure. However, significant progress remains to be made. We expect that the lobbying efforts will continue during Albany's next budget round in Late 2026/Early 2027, with the focus on further amending § 5102(d) and closing the Joint and Several Liability loophole. We will continue to monitor these efforts and work with our clients and insurers to use these changes to positively develop our defense strategies and continue to lower and limit our exposure.