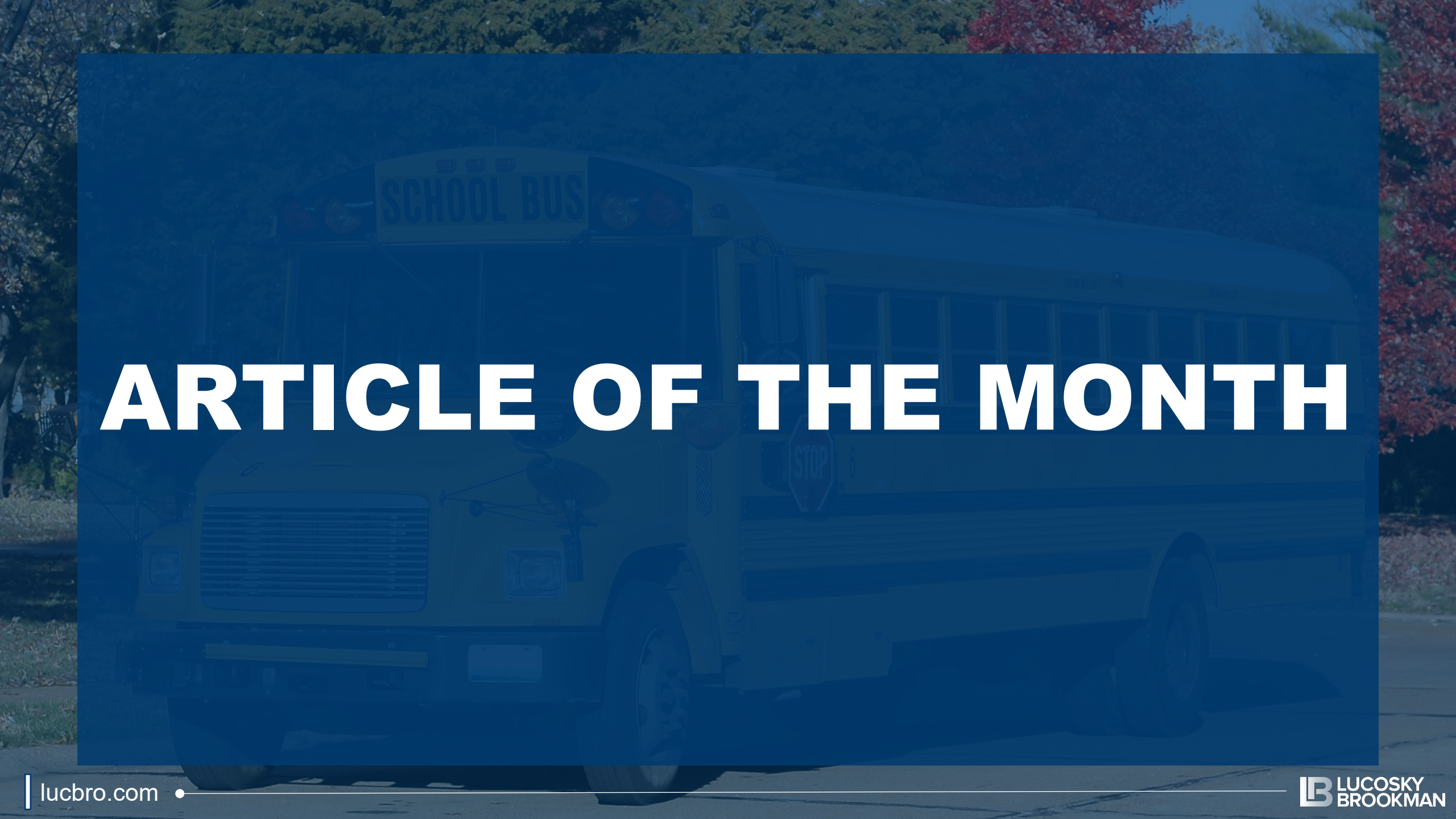

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How Transportation Companies can AVOID Third-Party Litigation Problems: Assessing the Impact of New York's New Procedural Law

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Similarly to late 2021 with the New York Comprehensive Insurance Disclosure Act, the New York State Legislature at the end of 2025 attempted to drastically change the scope of third-party litigation in New York State with the cutely named Avoiding Vexatious Overuse of Impleading to Delay or "AVOID" Act. There are numerous layers to the impact of this law beyond its text, including whether this law violates the substantive due process of litigants who could now be held liable in actions due to a procedural technicality rather than the merits. New York Courts talk a very good game about wanting matters 'resolved on the merits' as opposed to procedural issues, whether that be untimely pleadings, delays in discovery, or other non-substantive issues. This law will test whether the resolution of disputes on the merits remains the paramount ideal. This article intends to discuss the practical impact on transportation companies, specifically, as opposed to providing a simple restatement of the new law.

It is first important to understand the context and that litigants were already protected against undue and inordinate delay of third-party actions. CPLR § 1010 already exists to provide a "safety valve" against undue delay or prejudice by way of a third-party complaint. Soto v. CBS Corp., 157 A.D.3d 740, 741 (2d Dept 2018) (citing Gomez v. City of New York, 78 A.D.3d 482, 483–84, 911 N.Y.S.2d 45 (1st dept 2010) (further citations omitted). Under this law, dismissal or severance lies within the sound discretion of the Court, and courts were advised to exercise this discretion with caution. See Rothstein v. Milleridge Inn, 251 A.D.2d 154, 155, 674 N.Y.S.2d 346 (1st Dept 1998). Now, the New York State Legislature has sought to take this discretion out of the hands of judges, as if defendants protecting themselves from manufactured personal injury claims is somehow 'vexatious' as the name of the act would suggest.

The Act itself is also incredibly vague with regard to non-contractual claims. The key changes, which go into effect as of April 18, 2026, are as follows:

- Any third-party action that arises from a contractual relationship must be filed within 60 days of that defendant's Answer;
- Non-contractual claims must be filed within 60 days of becoming aware of a potentially liable third-party defendant – an inherently vague standard;
- No extension beyond 30 days are permitted without Court Order and no defendant is permitted to file a third-party complaint 12 months after the Answer without written consent of both the Court and the plaintiff – the plaintiff's bar now holds the discretion as to whether defendants can file third-party complaints.
- Second-third party actions must be commenced within 45 days after service of the third-party answer, a second third-party defendant must commence within 30 days after their answer, and all subsequent third-party defendants must commence their actions within 20 days after their answer – meaning that a second third-party defendant brought into a case well after its filing sees the most prejudice in its procedural restrictions;
- No third-party litigation is permitted whatsoever after filing of the Note of Issue with no affordance to judicial discretion;
- All third-party complaints must be served within 20 days as opposed to the 120 day limit previously permitted under the CPLR

Though there are currently some narrow exceptions, those exceptions only apply to matters involving the grave injury exception to the Workers' Compensation Law and impact a small percentage of cases.

This is clearly a shortsighted piece of legislation that fails to grip the practical realities in civil litigation. The following is only a small sample of the problems created by this law:

- Unknown Potential Litigants: Personal injury plaintiffs in civil litigation are often involved in prior or subsequent accidents that could contribute to the alleged injuries. At the same time, plaintiffs are often slow responding to discovery. It is highly common to learn of other contributing events and accidents involving a plaintiff more than a year after an Answer based upon the pace of paper discovery or not learning this information until plaintiff's deposition;

- Flood of Third-Party Filings: This law will invite third-party litigations, driving up defense costs and insurance rates, because defendants will be forced to make these claims or have them waived – make no mistake that this is the intention, so the specter of additional and higher defense costs will push clients and carriers to resolve cases rather than litigate;
- Unnecessary Motion Practice: We will likely see an uptick in motion practice and costs, whether this comes from motions to file late third-party actions, motions to dismiss third-party actions that the third-party defendants deem frivolous, or even motions for sanctions for frivolous claims. The unforeseen consequences of this act are far reaching.

The question we need to answer in this industry is how to best protect ourselves in these situations, so we are not prejudiced by this law as written. Much of our ability to protect ourselves will actually start well in advance of these deadlines – and even prior to the filing of the Complaint, which will hopefully mitigate the compressed time constraints.

Here are some recommendations and issues to be aware of as we are confronted with the practical fallout of this new law:

- Know Your Contracts: If an event occurs, whether it be a motor vehicle accident, a workplace incident, or a dispute over a shipment or delivery, as soon as any incident arises, identify all vendors, contractual partners, and relevant insurance companies that could owe defense or indemnity. Make sure these full, executed, and up-to-date agreements are in the relevant claims file and provided to defense counsel immediately so defense counsel is prepared to draft and file third-party actions upon appearing in any litigation;
- Background and Investigation: The most common scenario for our trucking, logistics, and passenger transportation clients will be the prior or subsequent accidents involving the plaintiff that we learn about during the litigation. Immediately upon an accident, we are confronted with a request from the claimant's attorney for insurance coverage information. We are entitled to the claimant's information as well to open a file. Immediately call these attorneys, obtain the claimant's Date of Birth and Social Security Number and run an immediate Insurance Services Office ("ISO") Search to run all claims on that plaintiff. Let's learn about all claimants' histories before they even formally sue in state court.

- Preserve All Defenses: Though we did cite the concern over motion practice, that pales in comparison to waiver of claims. Be prepared to file more third-party litigations. Be prepared to be sued in more third-party litigations – particularly when there is a dispute over whether plaintiff has sued the correct entity. Do not worry at the onset about potential ramifications or initial costs – get these third-party actions filed, and we can always assess whether it is appropriate to discontinue the same.

We also wish to note that New York does still have a six-year Statue of Limitations to sue for contribution after judgment. We do not relish the idea of having to start a subsequent post-action litigation for contribution, but it further informs why this is a plaintiff-driven procedural change as the plaintiff's bar is not impacted by whether prospective defendants sue each other after the underlying litigation concludes.

It is also highly probable that this law will change in some regards, just as the Insurance Disclosure Act did four years ago. There will be significant noise in Albany relative to the impact of this law and changes are likely to occur. We will continue to update our clients as this happens and work together to deal with this everchanging landscape.