



ARTICLE OF THE MONTH

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Reforms to New York Insurance Law Bring Serious Relief to Transportation Defendants Governor Kathy Hochul's Proposal to Strengthen the Serious Injury Threshold Law Could be a Gamechanger for Transportation Defendants

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New York Insurance Law Section 5102(d) was designed to limit recovery for injuries in motor vehicle accidents. Section 5102 in its entirety defines what is considered "basic economic loss" and establishes the No-Fault State status for New York with the intention of removing normal economic losses and medical expenses from litigation. Through the decades, the plaintiff's bar has chiseled away at these restrictions through reforms and judicial interpretations that have softened the impact of this law to the point where a minuscule number of cases are dismissed for failure to meet the 'Serious Injury Threshold' even when, from a practical standpoint, dismissal is warranted.

Those familiar with New York litigation see this story play out time and again. Radiologists will rely on the inherent ambiguity of film studies or even opine that herniations and other soft tissue changes exist even if the objective evidence says otherwise. The courts have allowed the lines to be blurred so that 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 and to a jury. This was simply not the intention behind this law.

Section 5102(d) specifically defines the serious injury threshold law as follows:

[A] personal injury which results in death; dismemberment; significant disfigurement; a fracture; loss of a fetus; permanent loss of use of a body organ, member, function or system; permanent consequential limitation of use of a body organ or member; significant limitation of use of a body function or system; or a medically determined injury or impairment of a non-permanent nature which 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.

Much of the above is self-explanatory, except for “significant limitation of use of a body function or system,” which is where this law sees its liberal interpretation and exploitation. No one conflates these issues with serious and obvious injuries that occur, but rather the ‘injuries’ that prospective plaintiffs walk away from immediately after the accident, before later claiming injury and impairment requiring surgeries, future medical care, and spurning seven-figure damages claims.

On January 13, 2026, Governor Kathy Hochul gave her State of the State Address in New York with numerous proposals to bring down insurance rates and curtail fraudulent personal injury litigation. Within this proposal were two highly noteworthy proposals beyond the fraud issues: “Tightening the Serious Injury Threshold” and “Reforming Joint and Several Liability.”

Governor Hochul rightly characterized section 5102(d) as “vague, applied inconsistently, and [inclusive of] temporary injuries that only sideline an individual for a short time following an accident. Though her proposal itself lacked specificity, there are numerous ways in which a change in this law could serve to provide much-needed additional tools to defendant transportation companies in defense of these claims.

There are numerous ways that this could manifest itself:

Rewriting the “Significant Limitation” Definition: Particularizing this language and limiting its scope is key. Was this language, as written, intended to render the “90/180” rule essentially meaningless? Was this section meant to allow for seven-figure non-economic damages awards for individuals who, in spite of their injury claims and procedures, are able to walk, work, and perform activities of daily life? We see too many cases where such plaintiffs still win these awards or settlements, and tightening this specific section of the statute would have far-reaching impact;

Stringent Injury-Definitions: In addition to the above, right now, there is essentially no manner in which to quantify ‘subjective’ injury and impairment complaints that lack objective foundation. Whether that be plaintiffs who claim they suffer from Complex Regional Pain Syndrome (CRPS) or those that argue Post-Traumatic Stress Disorder because of an accident but do not show the objective evidence under the DSM-5 guidelines for mental illness, spelling out the actual injury types and required components with specificity would require plaintiffs to produce significantly more medical evidence than is currently required.

Shifting the Focus Back to Objective Medical Evidence: We have all seen this scenario play out time and again: 1) Radiological findings show no tears or fractures or evidence of traumatic injury; 2) Some Radiologist states those findings exist; 3) An Orthopedist relies on those findings, opines that surgical intervention is necessary; 4) Despite expert medical evidence and testimony stating the injury did not exist or was pre-existing, a competing doctor affidavit sends the question to a jury. Creating serious, unimpeachable and objective standards for actual medical evidence of injury could serve to increase the burden on plaintiffs to prove an actual ‘issue of fact’ to avoid summary judgment and dismissal.

The other interesting and less publicized note in Governor Hochul's address was as to Joint and Several Liability. 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. Changing this aspect of the law would shift strategies in cases with clear liability defenses.

There is further discussion as to a modified comparative negligence approach. Currently, if a plaintiff is 90% responsible for their *own* accident, that plaintiff can still recover for 10% of their damages. Many states modify this that if a plaintiff is found 51% responsible, they do not recover any damages. Bringing this approach to New York would create 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 is heartening that New York is beginning to see the impact of exploding litigation costs, settlement figures, and jury awards beyond the very-concerning fraud epidemic and accompanying RICO suits. The world of motor vehicle personal injury litigation in New York requires serious overhaul, and we will wait to see what tangible proposals and statutory changes are proposed so we can gauge the impact on our practice and defense of our clients moving forward.