Lucosky Brookman Trucking & Transportation Newsletter

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New York / Southern District
Court permits motor carrier's claims over New York City's migrant transportation lawsuit to proceed in part.

Roadrunner Charters, Inc. v. N.Y.C., 2026 U.S. Dist. LEXIS 165442 (S.D.N.Y. July 27, 2026)

The Southern District of New York granted in part and denied in part New York City's motion to dismiss claims brought by an interstate motor carrier arising from the City's lawsuit challenging Texas' migrant transportation program. Roadrunner alleged the City's underlying action forced it to terminate its transportation contract with Texas after facing potential liability exceeding $700 million. Although the Court dismissed certain constitutional claims, it allowed portions of the carrier's tort claims to proceed, concluding the complaint plausibly alleged interference with its contractual and business relationships. The decision highlights the legal challenges that may arise when government action affects interstate motor carriers operating under public transportation contracts.

New Jersey / District of New Jersey
Court compels London arbitration of cargo insurance dispute despite related Carmack Amendment claim.

LX Pantos Am., Inc. v. AGX Freight Logistics, LLC, 2026 U.S. Dist. LEXIS 163439 (D.N.J. July 23, 2026)

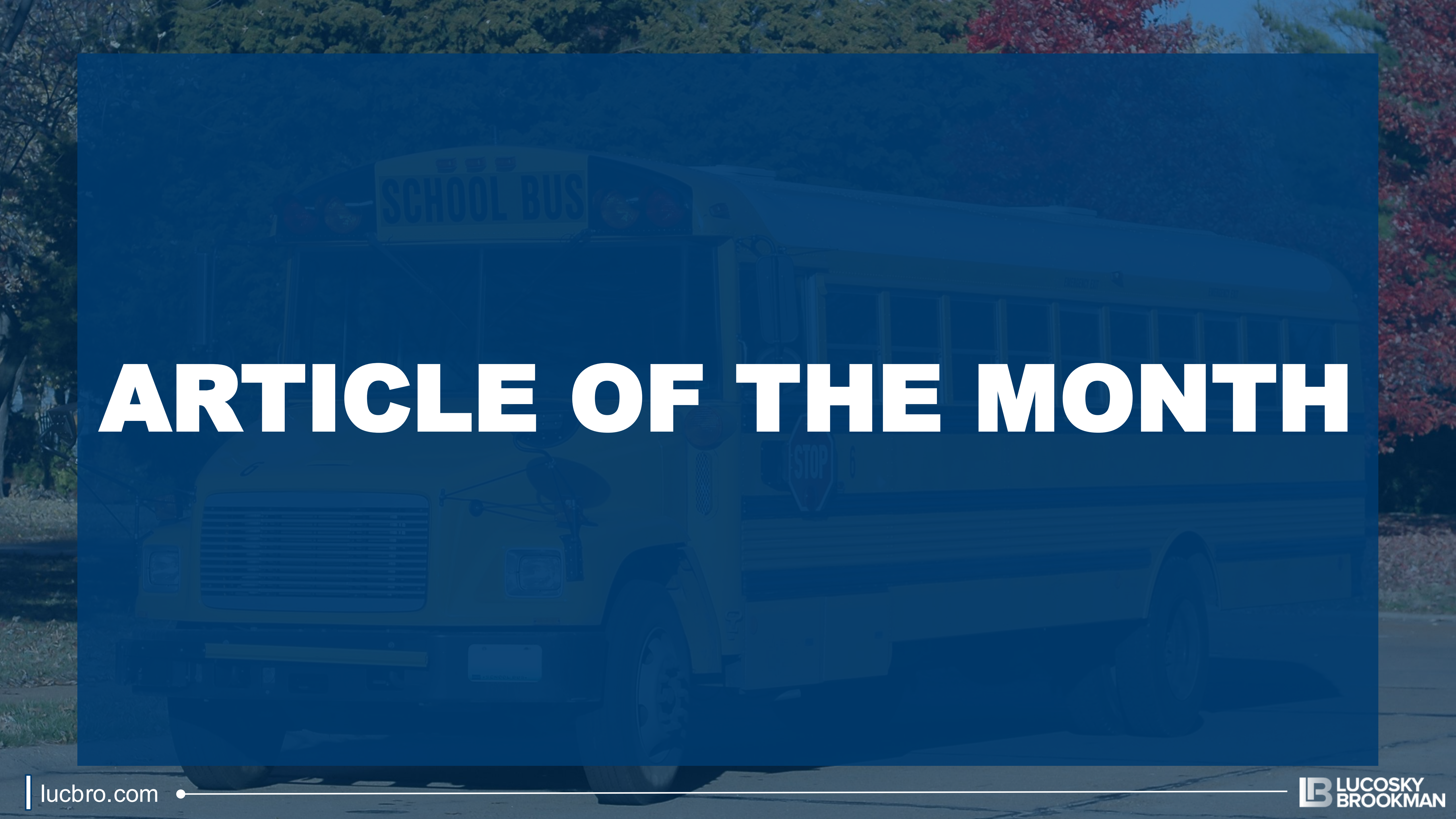
The District of New Jersey granted an insurer's motion to compel arbitration, holding that a freight forwarder's breach of contract claim under a contingent cargo insurance policy was subject to the policy's mandatory arbitration provision. The dispute arose after twenty-five shipments valued at more than $3.4 million were allegedly lost under a broker transportation agreement. Although the plaintiff argued its insurance claim was inseparable from its non-arbitrable Carmack Amendment claim against the broker, the Court concluded the coverage dispute arose independently under the policy and fell within the Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The decision reinforces the enforceability of international arbitration clauses in transportation insurance agreements.

Pennsylvania / Middle District
Court allows punitive damages claims to proceed against trucking company following construction zone collision.

Haines v. Brown, 2026 U.S. Dist. LEXIS 159018 (M.D. Pa. July 17, 2026)

The Middle District of Pennsylvania denied a trucking company's motion for partial summary judgment, allowing punitive damages claims to proceed following a multi-vehicle collision in a highway construction zone. The plaintiff alleged the tractor-trailer driver failed to recognize advance warning signs and struck stopped traffic, while also asserting the carrier maintained deficient hiring, training, and supervision practices. The Court found genuine issues of material fact regarding whether the driver's conduct and the company's safety practices demonstrated reckless indifference sufficient to support punitive damages under Pennsylvania law. Because a reasonable jury could conclude the defendants acted with conscious disregard for the safety of others, the Court held the claims should be resolved at trial.

ARTICLE OF THE MONTH



ARTICLE OF THE MONTH

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?

By: Steven Saal, Partner

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.

ABOUT US

Lucosky Brookman's Transportation Practice Group, a specialized division within our Insurance Defense and Coverage Practice Area, represents clients and their carriers in complex tort and coverage litigation across the transportation industry. Our team of experienced attorneys handles cases in state and federal courts throughout New York, New Jersey, Kansas, Pennsylvania, and Texas.

Our practice combines deep industry knowledge with litigation expertise to provide exceptional legal representation to transportation companies facing increasingly complex regulatory requirements and litigation challenges. We understand that transportation businesses operate in a unique legal landscape where federal regulations, state laws, and local ordinances create a multifaceted compliance environment, and we tailor our approach accordingly.

We provide comprehensive legal representation to a diverse range of transportation clients, including interstate trucking fleets, railroads, school bus companies, waste hauling companies, taxicab operators, shuttle and bus services, rental vehicle fleets, and ambulance providers. Our attorneys have extensive experience addressing personal injury claims, cargo disputes, environmental issues, hazardous materials incidents, indemnification matters, and insurance coverage challenges. We also maintain strategic partnerships with preeminent local, regional, and national agencies, allowing us to stay ahead of regulatory developments, collaborate on proactive risk mitigation strategies, and deliver a truly integrated defense in complex transportation matters.

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