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Besides Ambiguity, What's in the New Motor Vehicle 'Tort Reform' Law?

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On Feb. 27, the New York Law Journal published our summary of Governor Kathy Hocul's tort reform proposals. The Governor included them in her budget proposal, which was to be adopted by April 1. Pushback from the plaintiff's bar was swift and rigorous.

It took two months for the Governor and legislative leaders to agree on changes designed to reduce the cost of automobile insurance in New York State. Now that the legislative dust has settled, let's take a look at what was accomplished—and what questions remain.

Under Section "4" of Section EE of the budget bill, the statute shall take effect immediately and shall be applicable to all actions and proceedings commenced on or after such date. That date is May 26, 2026, the date the bill was signed into law, as Chapter 58 of the Laws of 2026.

The 90/180 Category Is Gone

Under New York's No-Fault Law, an injured plaintiff cannot recover for non-economic loss—pain and suffering—from a motor vehicle owner or operator unless the plaintiff has sustained a "serious injury."

For decades, one of the nine statutory categories of serious injury was the so-called "90/180 category." That category allowed recovery where the plaintiff sustained 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."

That category was often the easiest one for plaintiffs to prove. It did not require the same kind of objective proof associated with other categories of serious injury. In many cases, the defendant—or its insurer—did not even know about the accident or claim within the first 180 days. By the time the claim surfaced, the plaintiff's physician had already determined that the plaintiff was disabled for the necessary statutory period.

Section 1 of the new law eliminates the 90/180 category from the definition of "serious injury," effective immediately.

Which Comes First: Liability or Serious Injury?

Here is where the new statute adds confusion.

Section 2 provides that no verdict for pain and suffering shall be fixed until the trier of fact has determined whether a serious injury exists. The statute begins this way:

"No liability for non-economic loss shall be fixed unless and until the trier of fact has determined the existence of a serious injury."

What does "fixed" mean?

Taking at face value, that sentence appears to direct the court or jury to determine serious injury before fixing liability for non-economic loss.

Does that mean the jury must answer the serious injury question first on the verdict sheet? Perhaps. But remember, even without a serious injury, a plaintiff may still be able to recover economic losses above Basic Economic Loss—for example, wage loss greater than $2,000 per month, wage loss extending beyond three years, or combined economic losses exceeding $50,000, or $75,000 if Optional Basic Economic Loss coverage was purchased.

So far, so good—serious injury first, then liability for pain and suffering.

But then comes the very next sentence:

"In any action to recover non-economic loss pursuant to this article, the trier of fact shall not determine the question of whether the injury is a serious injury until the trier of fact has determined the party or parties at fault."

Well, that seems to say the opposite.

That sentence appears to direct the fact finder to determine fault before deciding whether the plaintiff sustained a serious injury.

So, which comes first?

The first sentence suggests serious injury before liability is fixed. The second sentence suggests liability before serious injury is determined.

Are we missing something, or do those two sentences point in opposite directions?

This raises an important practical question: can defendants still move for summary judgment based on the serious injury threshold before trial? For more than 50 years, serious injury threshold motions have been a central feature of New York motor vehicle litigation. But if the statute says the trier of fact cannot decide serious injury until after fault is determined, plaintiffs will surely argue that threshold motions are premature unless and until liability has been resolved.

How will courts reconcile these provisions?

Is it chicken or egg?

There are those that argue that the intention of this language was to clear up a dispute between the Appellate Departments on when interest can begin to accrue on a judgment. This section is supposed to settle that dispute by holding that until there is a finding of both negligence and serious injury, interest does not run on a judgment. If that was the intention, the drafters could have found a simpler and cleaner way to say so. Litigation will undoubtedly abound. This is an inarticulate remedy.

The $100,000 Cap for Certain Plaintiffs

Section 2 also includes a provision limiting recovery for pain and suffering to $100,000 in certain cases involving uninsured vehicles, impaired drivers, or felony-related operation of a motor vehicle.

But the limitation is narrow—very narrow.

The statute provides that, except in wrongful death actions, recovery for non-economic loss shall be limited to $100,000 where the injured person is at fault, is not otherwise barred from recovery under CPLR 1411, and was:

1. operating an uninsured motor vehicle and was responsible under the Vehicle and Traffic Law for insuring that vehicle, unless

the lapse in insurance coverage was for fewer than 30 days;
2. operating a motor vehicle while impaired at the time of the accident and was convicted of that impairment; or
3. operating a motor vehicle in the commission of a felony, or in immediate flight from the commission of a felony, and was convicted of that felony.

There are several important nuances.

First, the limitation does not apply to wrongful death actions.

Second, it limits only non-economic loss—pain and suffering. It does not limit recovery for economic loss above Basic Economic Loss, such as excess medical expenses or wage loss.

Third, the injured party must be "at fault." How much fault? The statute does not say.

Fourth, in the uninsured vehicle context, the limitation applies only if the injured person was operating an uninsured vehicle and was responsible for insuring it. If the injured person was driving someone else's uninsured vehicle, the cap does not appear to apply. So, if a husband owns the car and is responsible for insuring it, but his spouse or child is driving it when the accident occurs, the statute may not restrict that driver's recovery.

Fifth, the cap does not apply if the insurance lapse was for fewer than 30 days.

Sixth, the impaired-driver limitation applies only if the operator was impaired and convicted. Impaired by what? The statute does not tell us.

Seventh, the felony limitation applies only if the operator was committing a felony or fleeing from one and was convicted of that felony. If the driver pleads to a misdemeanor, the limitation apparently does not apply.

In short, the $100,000 limitation exists, but it may apply only rarely.

The driver must be:

- operating an uninsured vehicle that the driver was responsible for insuring;
- operating while impaired and convicted of that impairment; or
- operating during the commission of a felony, or immediate flight from one, and convicted of that felony.

And even then, the limitation does not apply to wrongful death claims and does not restrict recovery for excess economic loss.

Section 3: Modified Comparative Negligence Comes to Auto Cases

Before this legislation, New York followed a pure comparative negligence rule in all negligence cases. A plaintiff's recovery was reduced by his or her percentage of fault, but fault did not bar recovery entirely.

A plaintiff who was 10% at fault recovered 90% of the damages. A plaintiff who was 90% at fault could still recover 10%.

That remains true in premises, products, construction, and other negligence-based civil claims.

But motor vehicle claims are now different.

Instead of simply saying that an auto plaintiff who is more than 50% at fault cannot recover—which would have been easy enough—the Legislature adopted a more convoluted formulation:

"In any action to recover damages for personal injury subject to [the No-Fault Law], the culpable conduct attributable to the claimant shall bar recovery if the culpable conduct attributable to the claimant is greater than the culpable conduct of the person against whom recovery is sought or is greater than the combined culpable conduct of the persons against whom recovery is sought."

So, what does that mean?

In a two-car accident involving one plaintiff and one defendant, if the plaintiff is 51% at fault, the

plaintiff cannot recover. The plaintiff's culpable conduct is greater than the defendant's.

Presumably, the same rule would apply where the defendant is a vicariously liable owner, even if the owner was not personally negligent. If the permissive driver's conduct is compared to the plaintiff's conduct, and the plaintiff is more culpable, recovery should be barred against both driver and owner.

In a three-car accident, things become more interesting. Suppose the plaintiff is 30% at fault, Driver 2 is 50% at fault, and Driver 3 is 20% at fault. Under the statute, the plaintiff's culpable conduct is greater than Driver 3's, so the plaintiff may be barred from recovering from Driver 3. But the plaintiff's culpable conduct is not greater than Driver 2's, so recovery against Driver 2 may remain available.

In any case where the plaintiff is 51% or more at fault, recovery is barred.

But the practical implications of the comparative fault bar will need to be addressed. Will the trial judges instruct the jurors that the plaintiff cannot recover if they find that the plaintiff is 51% or more at fault? Or will the trial judges merely dismiss an action if the verdict sheet apportions 51% or more fault to a plaintiff? Will the parties be permitted to advise the jurors that the plaintiff cannot recover if the plaintiff is 51% or more at fault?

The statute does not appear to alter New York's existing rules of joint and several liability. That means the allocation of fault among multiple defendants—and the available insurance limits behind each defendant—will remain critically important.

In practical terms, a 20% defendant with substantial insurance may still be an important target in litigation, depending on how the new statutory language is applied.

Bottom Line

The new motor vehicle legislation does three important things:

1. eliminates the 90/180 category of serious injury;
2. imposes a narrow $100,000 pain-and-suffering cap for certain at-fault plaintiffs operating uninsured vehicles, driving while impaired, or committing felonies; and
3. replaces pure comparative negligence with a modified comparative negligence rule in auto personal injury cases.

But the legislation also creates questions.

Most importantly, courts will have to reconcile the seemingly inconsistent language about whether fault or serious injury must be determined first. That issue may affect verdict sheets, trial sequencing, and the continued availability of serious injury threshold motions before trial.

The stated goal was to reduce automobile insurance costs. We are hopeful it will. But one thing is certain it will create a new generation of motion practice to clarify legislative intent.

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