

New York's Sweeping Motor Vehicle Tort Law Reforms: More Than Meets the Eye

Key Changes Insurers and Defense Counsel Need to Know

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Effective for all actions commenced on or after **May 26, 2026**, Assembly Bill A10008 enacts sweeping changes to New York's motor vehicle tort law. While broadly characterized as pro-defendant, these reforms present a more complex picture for insurers and defense counsel, removing established dispositive tools, potentially increasing per-claim litigation costs, and introducing procedural uncertainties that will take years of appellate development to resolve.

This alert examines key changes from a defense and insurer perspective.

Key Law Changes

- **Changes the legal definition of “serious injury” under New York’s no-fault auto insurance system** by eliminating the old 90/180-day category, which allowed claims based on temporary injuries that kept someone from performing their normal daily activities for at least 90 out of 180 days after an accident.
- **Adds a new rule capping non-economic damages at \$100,000 for drivers who were uninsured** (with a narrow exception for lapses under 30 days), impaired, or committing a felony at the time of the accident. This does not apply to wrongful death cases.
- **Changes the comparative fault rules so that an injured person cannot recover anything if their own fault is greater than the fault of the person they are suing.**
- **Reconciles “liability” (for interest accrual) where both fault and serious injury are established.**

Key Issues Raised by These Changes (*Defense and Insurer Perspectives*)

1. Loss of Summary Judgment Alternative

Elimination of the 90/180-day category removes a significant dispositive mechanism that historically enabled insurers and defense counsel to seek dismissal of soft-tissue and other largely subjective injury claims. Although judicial application of the category was not always uniform, it nonetheless supplied a recognized framework for testing subjective complaints and pursuing summary judgment, often avoiding the expense and uncertainty of trial.

In its absence, claims that previously may have been dismissed at the threshold stage are more likely to proceed further into litigation, thereby increasing defense costs and prolonging claim lifecycles across the automobile liability portfolio. Nevertheless, the defense may still contend that rigorous scrutiny of medical proof and disciplined claim screening will preserve meaningful opportunities to narrow or defeat marginal claims.

2. Migration of Claims into Higher-Value Categories

Removal of the 90/180-day category may reduce certain soft-tissue filings, but plaintiffs' counsel may seek to reframe comparable injuries under the remaining serious injury categories—permanent consequential limitation, permanent loss, or significant limitation of use. Those categories are heavily dependent on medical opinion, less amenable to early resolution on summary judgment, and historically associated with higher verdict values.

Accordingly, even if overall claim frequency declines, this category migration may increase average indemnity exposure sufficiently to offset any reduction in filing volume. At the same time, if courts continue to require objective medical support, carriers may retain some ability to limit this migration through early and consistent challenges to inflated categorizations.

3. Limited Reach of the Non-Economic Damages Cap

The \$100,000 cap on non-economic damages is limited to claims involving uninsured, impaired, or felonious drivers and does not extend to death cases. For the majority of the personal injury portfolio—claims involving insured and sober motorists—non-economic damages remain uncapped.

The provision, therefore, offers only limited relief to liability carriers seeking to reduce aggregate indemnity exposure or achieve more predictable reserving, as its practical effect is confined to a relatively narrow subset of claims with distinct coverage and defense characteristics. Even so, within the limited class of cases to which the cap applies, insurers may benefit from a modest degree of additional predictability in reserving and settlement valuation.

4. Increased Defense Costs from Fault-Allocation Litigation

Under the modified comparative fault rules, the plaintiff's percentage of fault no longer operates solely as a proportional reduction in damages; it now functions as a binary, case-dispositive threshold. Demonstrating that a

plaintiff bears more than 50 percent fault may require increased expenditures on accident reconstruction, biomechanical analysis, and supplemental depositions in disputed liability matters.

In many common accident scenarios, those additional costs may erode, and in some instances eliminate, the financial benefit the comparative fault bar was intended to confer. Notwithstanding, the revised fault framework may ultimately afford defendants a stronger merits-based avenue to defense verdicts and increased leverage for favorable settlements in appropriate liability disputes.

5. Procedural Disruption and Loss of Early Defense Leverage

Although the reform was intended to reduce fraud, lower costs, and generate savings for insureds, the statute as written may suggest sequential determinations—fault first, serious injury second, and non-economic damages last—thereby creating the functional equivalent of tri-furcated proceedings. Such a structure may shift the serious injury threshold from judge to jury and diminish an important source of pre-trial defense leverage. It may also increase litigation costs, create uncertainty concerning economic damages that fall outside the prescribed sequence, and heighten the risk of juror confusion where the same evidence bears on both injury and fault.

Settlement dynamics may likewise be affected, as defendants assess whether the early leverage once supplied by the serious injury defense can be preserved, while plaintiffs must weigh the expense of litigating fault in an initial phase only to face defeat at a later stage. At the same time, the cost and uncertainty associated with multi-phase proceedings may encourage earlier resolution by all parties. In that respect, the procedural uncertainty may also create opportunities for the defense to advance threshold and case-management arguments that support earlier and more realistic settlement discussions.

6. Prolonged Interpretive Uncertainty and Appellate Litigation

The simultaneous adoption of modified comparative fault, a statutory damages cap, and the elimination of a longstanding serious injury category is likely to generate substantial appellate litigation on foundational interpretive questions. Courts may be required to determine what constitutes “culpable conduct,” how fault should be allocated among multiple defendants where a plaintiff’s share exceeds that of some but not all co-defendants, and how the 30-day lapse exception should be applied—all in the absence of established appellate guidance.

During this transitional period, insurers face material uncertainty, together with the familiar risk that courts may construe statutory ambiguities in favor of claimants rather than parties seeking to limit recovery. Until appellate decisions provide greater clarity, claim valuation is likely to remain less predictable, and defense strategies will require continued refinement. Over time, however, appellate clarification may yield a more stable framework that enables insurers and defense counsel to refine valuation practices and litigate these claims with greater confidence.

Early Takeaways

Taken together, these reforms present insurers and defense counsel with a mixed but potentially manageable landscape: although they may reduce certain traditional avenues for early disposition and introduce near-term uncertainty in claim valuation, procedure, and appellate interpretation, they also create new opportunities to press rigorous medical proof requirements, develop stronger fault-based defenses, and advocate for more disciplined case management.

The ultimate effect will depend substantially on how courts construe and implement the new framework in practice. If judicial interpretation develops in a manner that preserves meaningful screening mechanisms and clarifies procedural sequencing, the defense and insurance industries may, over time, adapt to the changes in ways that improve predictability, refine litigation strategy, and support more consistent claim outcomes.

Perspective	Advantages	Disadvantages
Plaintiff	Elimination of the 90/180-day threshold removes a common defense tool that was notoriously difficult for plaintiffs to prove and frequently supported summary judgment motions against them.	Loss of the 90/180-day category eliminates a viable pathway for genuinely injured plaintiffs with non-permanent injuries who suffer real, debilitating injuries that resolve within a year but profoundly disrupt their lives for months.
Plaintiff	Clearer serious-injury categories may streamline litigation by allowing plaintiffs to focus on more objectively verifiable injury categories, potentially reducing motion practice and getting cases to trial or settlement faster.	The modified comparative fault rule is a dramatic shift from New York’s pure comparative fault system, creating a complete bar when the plaintiff’s fault exceeds the defendant’s—even where the defendant was clearly negligent.
Plaintiff	The \$100,000 cap and comparative fault bar apply only to specific subsets of claimants; the vast majority of insured, sober plaintiffs retain full access to non-economic damages.	The \$100,000 cap sets a legislative precedent for tort caps in New York, and the narrow 30-day lapse exception may trap lower-income drivers with minor administrative insurance lapses.
Defense	Elimination of the 90/180-day category removes a large volume of marginal soft-tissue and subjective-complaint claims from the system entirely.	Loss of the 90/180-day category eliminates a well-developed summary judgment tool backed by decades of case law, potentially forcing plaintiffs to plead under harder-to-defeat categories.
Defense	The modified comparative fault rule provides a complete bar to recovery any time a plaintiff is more than 50% at fault, which may increase defense leverage in settlement negotiations.	The comparative fault bar invites extensive and costly litigation over fault allocation as a dispositive issue, requiring accident reconstruction experts and additional discovery that may offset the rule’s benefit.

Defense	The \$100,000 cap on non-economic damages for uninsured, impaired, or felonious drivers limits exposure and makes reserves and settlement valuations far more predictable.	The narrow scope of the non-economic damages cap limits its practical utility to a small subset of cases, and plaintiffs may shift strategy toward inflating economic damages or arguing the lapse exception.
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