



A. Statute of Limitations

Personal Injury: Three years from date of accident -CPLR 214(5)

Property Damage: Three years -CPLR 214(4)/ 9% interest accrues from date of loss.

PIP Subrogation: Three years from date of payment of the medical invoice.

Wrongful Death: Two years from death- EPTL 5-4.1

No-Fault: A provider needs to submit a bill for payment 45 days from date of service

— A denial must be sent to the provider within 30 days

Action Against Municipality: In the State of New York a person has 90 days to file a notice of claim and 1 year and 90 days to commence a lawsuit against a city, village or town government or their agencies. (General Municipal Law § 50-e and § 50-i).

B. Comparative Negligence

New York is one of 13 states that have adopted a “pure” comparative fault law (CPLR 1411).

The pure comparative doctrine allows a plaintiff to recover damages from a defendant minus his or her percentage of comparative negligence. Even if the plaintiff is 99% responsible for the accident, he or she can recover 1% of the damages in New York.

C. Joint & Several Liability

In New York, motor vehicle accidents are exempt from joint and several liability limitations. For motor vehicle accidents, New York has adopted the 1% rule.

The 1% rule is something that will routinely come into play in many motor vehicle accidents in New York involving large commercial vehicles. A typical scenario would involve one defendant that only has a minimum \$25,000 policy and another defendant that is a large commercial vehicle having a \$1+ million policy. As long as there is at least 1% liability against the insured vehicle, the insured ends up being responsible for all of the damages awarded after the exhaustion of the co-defendant’s \$25,000 policy. This applies to economic and non-economic damages.

D. Serious Injury Threshold

In New York, a plaintiff must establish that they sustained a “serious injury” as defined under §5102(d) of the New York State Insurance Law in order to recover non-economic damages in a motor vehicle accident. Essentially, the threshold is a bar to recovery in a lawsuit for alleged injuries arising out of a motor vehicle accident.

Section 5102(d) of the Insurance Law defines “serious injury” as an injury that results in one of the following:

- 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.

A threshold defense in New York can be used in settlement negotiations, in motion practice to get the Complaint dismissed or at trial to obtain a defense verdict even in those cases where liability is unfavorable.

E. PIP Subrogation

New York loss transfer laws allow for PIP subrogation recovery from the negligent motorist's vehicle insurer.

The right to recover under the loss transfer requires one of two conditions to be met: At least one of the motor vehicles involved must weigh more than 6,500 lbs. unloaded or one of the vehicles involved must be used principally for the transportation of persons or property for hire. N.Y. INS. LAW § 5105(a). If one of these two conditions is met, an insurer is free to pursue a loss transfer against the negligent motorist's vehicle insurer for the recovery of the \$50,000 first-party benefits.

Arbitration is the sole remedy for pursuing a loss transfer in New York. There is no requirement that the insurer/carrier be a signatory as arbitration is the sole remedy of any insurer seeking a loss transfer arising from a motor vehicle accident in New York.

Note, loss transfer is only applicable to the \$50,000 first-party benefits a compensation insurer becomes obligated to pay under Section 5102(b)(2) of New York's Insurance Law. An award of payment of a PIP subrogation claim does not reduce the bodily injury limit. (N.Y. Insurance Law § 5105 (c)).

F. Graves Amendment

Under the Graves Amendment, the owner of a leased vehicle cannot be held vicariously liable for the negligent operation of that vehicle, despite the general rule of NY VTL 388 that a vehicle's title owner is presumptively liable. So long as the owner demonstrates, prima facie, that it was engaged in the business of renting or leasing motor vehicles and was not otherwise negligent, the owner/lessor will be dismissed from the litigation pursuant to the Graves Amendment. *See Gluck v. Negben*, 72 A.D.3d 1023 (2d Dep't 2010).

Pursuant to Federal statute 49 USC § 30106, the Graves Amendment preempts all state statutory and common law to the extent those laws hold owners in the business of renting or leasing motor vehicles, vicariously liable for the negligence of drivers.

49 USC § 30106(a) states:

- (a) In general. – An owner of a motor vehicle that rents or leases the vehicle to a person (or an affiliate of the owner) shall not be liable under the law of any State or political subdivision thereof, by reason of being the owner of the vehicle (or an affiliate of the owner), for harm to persons or property that results or arises out of the use, operation, or possession of the vehicle during the period of the rental or lease, if -
 - (1) the owner (or an affiliate of the owner) is engaged in the trade or business of renting or leasing motor vehicles; and
 - (2) there is no negligence or criminal wrongdoing on the part of the owner (or an affiliate of the owner).