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I. Minimum Liability Limits

New York law requires the following minimum coverage:

- $25,000 for injuries to one person;
- $50,000 for injuries to multiple people;
- $50,000 for death to one person;
- $100,000 for death to multiple people;
- $10,000 for property damage.

II. Negligence laws (Is the jurisdiction a pure contributory negligence state; what type of comparative fault is applicable, etc?)

New York is a pure comparative negligence state. Pursuant to CPLR §1411, the amount of damages otherwise recoverable by a plaintiff are diminished by the percentage of negligence attributed to plaintiff.

III. Bodily Injury Statute of Limitations

NY CPLR §214(5) imposes a three (3) year statute of limitations on actions seeking recovery for bodily injury.

IV. Property Damage Statute of Limitations

NY CPLR §214(4) imposes a three (3) year statute of limitations on actions seeking recovery for property damage.
V. Are punitive damages insurable in the jurisdiction?


VI. Is there an intrafamily immunity defense?

No. The doctrine of intrafamily immunity has been abrogated by the Court of Appeals. See, *Gelbman v. Gelbman*, 23 NY2d 434 (1969). Now, a parent may maintain an action against an unemancipated child for negligence, and a child may likewise sue his or her parent for acts of negligence. *Id.* In addition, where the negligence of the parent would expose the parent to liability if the injured person were not the person’s child, but some unrelated third person, then the parent may be held liable to his or her child in negligence. See, *Holodock v. Spencer*, 36 NY2d 35 (1974).

In addition, spouses may sue each other for torts, but there will only be insurance coverage where the insurance policy indicates that there is coverage. See, Ins. Law § 3420(g); *State Farm Mut, Auto. Ins. Co. v. Westlake*, 35 NY2d 587 (1974).

VII. Is there a bodily injury damage threshold? If so, what is it?

Yes. In order for a plaintiff to bring a personal injuries action for “noneconomic loss” arising out of an automobile accident if the plaintiff establishes a serious injury. “Noneconomic loss” is defined as pain and suffering and similar nonmonetary detriment. See, Ins. Law § 5102(c); *Smalls v. AJI Industries, Inc.*, 10 NY3d 733 (2008).

“Serious injury” is defined under the statute as a personal injury that results in:

- Death;
- Dismemberment;
- Significant disfigurement;
- Fracture;
- Loss of 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
- Injury or impairment of a person’s usual or customary daily activities for not less than 90 days during the 180 days immediately following the occurrence of the injury or impairment

See, Ins. Law § 5102(d).

VIII. What are the quick rules on Subrogation MP/PIP?
Where property of one person is used in discharging an obligation owed by another or a lien upon the property of another, under such circumstances that the other would be unjustly enriched by the retention of the benefit thus conferred, the former is entitled to be subrogated to the position of the obligee or lienholder. See, Elwood v. Hoffman, 61 AD3d 1073 (3d Dept 2009).

Subrogation is not permitted for basic PIP benefits between “covered” parties under the no-fault statute. Subrogation is allowed for A-PIP or where sought against a party that is not considered a “covered party” under no-fault statute. See generally, Allstate Ins. Co. v. Stein, 1 NY3d 416 (2004).

Loss transfer arbitration claims to recover first party benefits against the at fault parties insurer allowed if at least one of the motor vehicles involved in the accident weighs more than 6,500 pounds unloaded, or is a motor vehicle used principally for transportation of persons or property for hire. See, Ins. Law § 5105(a). The carrier must submit the claim to arbitration. See, Ins. Law § 5105(b). The liability of an insurer shall not affect or diminish its obligations under any policy of bodily injury liability insurance. Ins. Law § 5105(c).

IX. Are there no fault laws in the jurisdiction?

Yes. Under Article 51 of New York’s Insurance Law, every owner’s policy of liability insurance issued on a motor vehicle must provide for the payment of first party benefits to persons, other than occupants of another motor vehicle or motorcycle, for loss arising out of the use or operation in New York of the motor vehicle. See, Ins. Law § 5103(a)(1). A “covered person” is entitled to recover lost wages and medical expenses up to $50,000.00. See, Ins. Law § 5102.

X. Is the customer’s insurance primary?

Generally yes. However, courts have determined that one of two or more policies covering the same risk provided only excess insurance compared to the others by examining the policies’ terms. See, Liberty Mut. Ins. co. v. Aetna Casualty & Sur. Co., 168 AD2d 121 (2d Dept 1991).

XI. Is there a seatbelt defense?

Under the Vehicle and Traffic Law, noncompliance with the provisions of the seat belt and safety belt statute is not admissible as evidence on the issue of liability, but may be introduced into evidence in mitigation of damages provided the party introducing said evidence has pleaded such non-compliance as an affirmative defense. See, Vehicle and Traffic Law § 1229-c(8). Thus, damages are mitigated to the extent that wearing a seat belt would have prevented or lessened injuries. See, Spier v. Barker, 35 NY2d 444, 449–450 (1974).

XII. Is there a last clear chance defense?

Adoption of the comparative negligence system in New York has resulted in the abrogation of the doctrine of last clear chance. See, Dominguez v. Manhattan & Bronx Surface Transit Operating Authority, 46 NY2d 528 (1979). The doctrine applied only where there was an issue
of contributory negligence and permitted a plaintiff guilty of contributory negligence to recover in a negligence action on a showing that the defendant had the last clear chance to avoid the accident. *See, Elliott v. New York Rapid Transit Corporation,* 293 NY 145 (1944); *Jarrett v. Madifari,* 67 AD2d (1st Dept 1979). *See also, Duncan by Guidry v. Hillebrandt,* 239 AD2d 811 (3d Dept 1997) (“Plaintiffs rely upon the last clear chance doctrine . . . which has lost its viability in this State since the adoption of the comparative negligence rule.”).

XIII.  **Is there an assumption of risk defense?**

New York recognizes the doctrines of implied and primary assumption of risk to reduce or eliminate plaintiff’s recovery. *See, CPLR § 1411.*

“Implied assumption of risk” is contained within CPLR Article 14-A’s concept of culpable conduct and is akin to comparative negligence. *Buchanan v. Dombrowski,* 83 Add 1497 (4th Dept 2011). It does not bar recovery, but reduces it in the proportion to which the assumption of risk, contributed to the injuries. *See, Rodriguez v. New York City Housing authority,* 211 AD2d 328 (1st Dept 1995).

Primary assumption of the risk does not measure the plaintiff’s culpable fault, but serves to measure the defendant’s duty of care. *See, Buchanan v. Dombrowski,* 83 AD3d 1497 (4th Dept 2011). Primary assumption of the risk may eliminate or reduce the duty of care owed to the plaintiff. *See, Lorifice v. Reckson Operating Pshp., L.P.,* 269 AD2d 572 (2d Dept 2000).

XIV.  **Is there a UM requirement?**


Uninsured insurance coverage is intended to provide financial recompense to innocent persons who receive injuries and the dependents of those who are killed through the wrongful conduct of motorists who would not pay damages. *See generally, Ins. Law §§ 5201 to 5225.* MVIAC was enacted to ensure that persons injured as a result of MVAs would receive compensation for their injuries and financial losses. *See, Lloyd v. Motor Vehicle Acci. Indemnification Corp.,* 23 NY2d 478 (1969).

Minimum uninsured motorist coverage is $25,000.00 for injury per person, $50,000.00 for death of a person, and $100,000.00 on account of injury or death of more than one person in any accident. *See, Ins. Law §3420(f)(1); Krieg v. State,* 183 AD2d 1025 (3d Dept 1992). Supplemental uninsured/underinsured coverage can be purchased up to the amount of insured’s liability coverage. *See, Ins. Law §3420(f)(2)(A).
XV. Is there a physical contact requirement?

As to hit-and-run causes of action, the Insurance Law specifically provides that the statutory protection extended to an insured or qualified person does not apply to any cause of action by a qualified person arising out of a motor vehicle accident occurring in New York State against a person whose identity is unascertainable unless the bodily injury to the qualified person arose out of a physical contact of the motor vehicle causing the injury with the qualified person or with a motor vehicle which the qualified person was occupying at the time of the accident. See, N. Y. Insurance Law § 5217.

The occurrence of physical contact between the hit-and-run vehicle and the insured vehicle is a condition precedent to arbitration under the uninsured motorist endorsement. See, Matter of Hanover Ins. Co. v. Lewis, 57 AD3d 221 (1st Dept 2008).


The burden is upon the claimant to show, at least prima facie, that actual physical contact occurred. See, Henderson v. Motor Vehicle Acc. Indemnification Corp., 112 AD2d 228 (3d Dept 1985); Travelers Ins. Co. v. Lombardo, 30 AD2d 1046 (4th Dept 1968). Where there is a triable issue as to whether the claimant’s vehicle actually came into contact with the hit-and-run vehicle, the appropriate procedure is to stay arbitration of the uninsured motorist claim pending trial of the threshold issue of physical contact. See, Utica Mut. Ins. Co. v. Leconte, 3 AD3d 534 (2d Dept 2004); New York Cent. Mut. Fire Ins. Co. v. Paredes, 289 AD2d 495 (2d Dept 2001).

XVI. Is there a mandatory ADR requirement?

New York does not have a mandatory ADR requirement, but a number of judicial departments have implemented ADR parts and the assigned judge has the discretion to send the case to mediation. Rule of Court also give assigned judge discretion to order attendance at settlement conference by parties and the insurance carriers.

XVII. Are agreements reached at a mediation enforceable?


XVIII. What is the standard of review for a new trial?

A party seeking to overcome a verdict must establish that the verdict was against the weight of the evidence, or that there were prejudicial errors made during trial. See. CPLR § 4404(a). See e.g., Bethel v. New York City Transit Auth., 92 NY2d 348 (1998)
A jury’s determination on damages may be set aside if the award “deviates materially from what would be reasonable compensation.” See, CPLR § 5501(c).

XIX.  Is pre-judgment interest collectable? If so, at what rate?

Prejudgment interest is recoverable as a matter of right in cases involving damage to property resulting from negligence at a rate of 9%. See, Mount Sinai Hospital v. Borg-Waner Corp., 527 F. Supp. 922 (S.D.N.Y. 1981). See, CPLR § 5001(a).

In a wrongful death cause of action, interest accrues from the time of death until the verdict or decision, plus post-verdict interest. See, EPTL § 5-4.3. Interest runs at 9% from date of death for pecuniary loss.

Pre-verdict interest is not available in personal injury actions. See, CPLR § 5001(a); Alkinburgh v. Glossing, 240 AD2d 904 (3d Dept 1977). In addition, claims for compensatory damages are entitled to pre-verdict interest, but claims for punitive damages are not entitled to pre-verdict interest. See, Lian v. First Asset Mgmt., 273 AD2d 163 (1st Dept 2000).

XX.  Is post judgment interest collectable? If so, at what rate?

The Civil Practice Law and Rules provide that every money judgment will bear interest from the date of its entry, and every order directing the payment of money which has been docketed as a judgment will bear interest from the date of such docketing. See, CPLR § 5003. Pursuant to CPLR § 5004, interest will be at the rate of 9% per annum except where otherwise provided by statute.

XXI.  Is there a workers’ compensation exclusive remedy defense?

The liability of an employer to its employees for their disability or death from injury arising out of and in the course of employment is exclusive and in place of any other liability whatsoever, to such employee, his or her personal representatives, spouse, parents, dependents, distributees, or any person otherwise entitled to recover damages on account of such injury or death or liability arising therefrom. See, N.Y. Work. Comp. Law § 11. See also, Acevedo v. Consolidated Edison Co. of New York, Inc., 189 AD2d 497 (1st Dept 1993).

This rule only provides immunity to employer and co-employees. Injured worker who accepts workers’ compensation benefits can still sue other culpable third parties. See, Westchester Lighting Co. v. Westchester County Small Estates Corp., 278 NY 175 (1938). Third party actions by other tortfeasors are allowed against the employer only in the cases of “grave injury” or where the employer has contractually agreed to indemnity. See, Workers’ Compensation Law §11.

XXII.  Is the doctrine of joint and several liability applicable?

Joint and several liability says that each tortfeasor is responsible not only for the share of plaintiff’s damages that he or she cause, but also for the shares attributable to the other culpable tortfeasors. Siegel, New York Practice § 168A (5th ed.).
Plaintiff’s right to enforce its judgment against any one or more of the defendants is limited by CPLR Article 16 which imposes some limitations on this right with respect to non-economic damages in personal injury actions, i.e., pain and suffering, mental anguish, and loss of consortium. See, CPLR § 1600.

CPLR § 1601 limits liability only or non-economic damages for those defendants whose share of culpability, as found by the finder of fact, is 50% or less, to such defendant’s percentage of culpability as found by the jury.

CPLR § 1602 contains several exclusions to the above-stated rule. Thus, a defendant remains jointly and severally liable where liability arises from the respondeat superior doctrine, actions requiring proof of intent, claims based upon use of a motor vehicle or motorcycle, claims based upon the reckless disregard of another’s safety, etc.

XXIII. Is there a self critical analysis privilege?


XXIV. Is accident reconstruction data admissible?

Accident reconstruction data is admissible to the extent that it complies with evidentiary principles. As all relevant evidence is generally admissible, if determined to be relevant, this data will be held admissible.

XXV. What is the rule on admissibility of medicals paid/reduced vs. total bills submitted?

The paid amount of medical bills is relevant and admissible. In an action for personal injury, injury to property or wrongful death, a plaintiff who seeks to recover for medical expenses, loss of earnings or other economic loss, CPLR § 4545 permits evidence of costs that were or will be indemnified from any collateral source.

XXVI. What is the jurisdiction’s rule on offers of judgment?

Except in a matrimonial action, at any time not later than 10 days before trial, any party against whom a claim is asserted, and against whom a separate judgment may be taken, may serve upon the claimant a written offer to allow judgment to be taken against him or her for a sum therein specified, with costs then accrued. Claimant’s acceptance of the offer results in judgment and closes the case. If the plaintiff rejects the offer and does no better than the offer at trial, then the claimant loses costs from the time of the offer and must pay defendant’s costs as of that time. See CPLR § 3221.
XXVII. What is the jurisdiction’s rule on spoliation of evidence?

Spoliation of evidence occurs where a litigant intentionally or negligently disposes of crucial items of evidence before his or her adversaries have any opportunity to inspect them. See, White v. Incorporated Village of Hempstead, 13 Misc. 3d 471 (Sup Ct, Nassau County 2006), order aff’d, 41 AD3d 709 (2d Dept 2007). Spoliation sanctions may be appropriate even if the destruction occurred through negligence rather than willfulness and even if the evidence was destroyed before the spoliator became a party, provided that he or she was on notice that the evidence might be needed for future litigation. See, Steuhl v. Home Therapy Equipment, Inc., 23 AD3d 825 (3d Dept 2005).

The following remedies have been imposed by courts upon the spoliating party:

- An order of preclusion preventing a party from contesting certain claims (Kerman v. Martin Friedman, CPA, PC, 21 AD3d 997 (2d Dept 2005));
- An order striking the party’s pleading (De Los Santos v. Polanco, 21 AD3d 397 (2 Dept 2005));
- Summary judgment (Amaris v. Sharp Electronics Corp., 304 AD2d 457 (1st Dept 2003));
- Missing evidence charge (Hulett ex rel. Hulett v. Niagara Mohawk Power Corp., 1 AD3d 999 (4th Dept 2003)); and
- Monetary sanctions (Dean v. Campagna, 44 AD3d 603 (2d Dept 2007)).

XXVIII. Are there damages caps in place?

There is no cap on damages in New York. Any party may challenge at the trial court level and on appeal, a damages award or lack thereof that “deviates materially from what would be reasonable compensation.” See, CPLR § 5501(c).

XXIX. Is CSA 2010 data admissible?

There have been no decisions on the admissibility of CSA 2010 data at this time.

XXX. Briefly, does the jurisdiction have any unique rules on electronic discovery?

There are no unique general rules pertaining to electronic discovery. At a preliminary discovery conference with the Court, establishment of the method and scope of any electronic discovery may be considered. Certain districts and/or judges have local rules relating to electronic filing and discovery, See, www.nycourts.gov.

XXXI. Is the sudden emergency doctrine recognized in the jurisdiction?

Yes. Under the emergency doctrine, when an actor is faced with a sudden and unexpected circumstance which leaves little or no time for thought, deliberation, or consideration, or causes
the actor to be reasonably so disturbed that the actor must make a speedy decision without weighing alternative courses of conduct, the actor may not be negligent if the actions taken are reasonable and prudent in the emergency context, provided that the actor has not created the emergency. See, Caristo v. Sanzone, 96 NY2d 172 (2001).

XXXII. Are there any rules prohibiting or limiting the use of the reptile theory at trial?

New York follows the “Golden Rule” which prohibits counsel from telling jurors to put themselves in plaintiff’s place and render such a verdict as they would wish to receive were they in plaintiff’s position. See, Marcoux Farm Serv. & Supplies, Inc., 290 F. Supp. 2d 457 (S.D.N.Y. 2003). However, where counsel’s “alleged appeals to the Golden Rule argument related to liability only and not damages,” the Second Circuit upheld the use of the tactics. See, Johnson v. Celotex Corp., 899 F.2d 1281 (2d Cir. 1990).

A party opposing a reptile theory argument may also rely on Federal Rules of Evidence 401, 403, and 404.

XXXIII. What are the jurisdictional limits of the jurisdiction’s civil courts – i.e. Small Claims, District Court, Superior Court?

The jurisdictional limits are as follows:
- Supreme Court – unlimited monetary jurisdiction
- County Courts – $25,000.00 or less
- New York City Civil Court - $25,000.00 or less
- District Courts (Nassau & Suffolk Counties only) - $15,000.00 or less
  - Small claims part - $5,000.00 or less
- City Court - $15,000.00 or less
- Town & Village Courts - $3,000.00 or less
  - Small claims - $3,000.00

XXXIV. Are state judges elected or appointed?

State judges are selected as follows:
- Court of Appeals: judges are appointed for a 14-year term by the Governor
- Appellate Division: justices are duly elected members of the supreme court whom the governor has designated to sit on the appellate division
- Supreme Court: justices are elected to the court from judicial districts for 14-year terms