New York at the Crossroads

WILL IT MODERNIZE LIABILITY LAW OR EXPAND IT?

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Introduction

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For the first time in decades, New York is on the cusp of change. Governor Kathy Hochul has presented a series of proposals to make living and working in New York more affordable by modernizing the state's liability laws and addressing what some refer to as the state's "fraudemic."

In May 2026, Governor Hochul signed two state budget bills into law that included several of these measures. Governor Hochul has also repeatedly vetoed legislation that would take New York in the wrong direction by authorizing more lawsuits and allowing larger, unpredictable awards.

New York is at the crossroads. It can adopt measures that address excessive liability and lawsuit abuse or continue to advance proposals that go precisely in the opposite direction.

This paper explores key areas in which the Empire State can establish a more balanced litigation environment that makes life more affordable for all New Yorkers.

The paper reexamines the New York litigation climate since the Empire Center published "State of Liability: New York's Costly Tort Laws and How to Fix Them" nearly a decade ago. In the interim, other states have improved their civil justice systems, but New York's problems have only grown. Excessive liability contributes to higher prices New Yorkers pay for auto insurance, school construction and transportation projects, homeownership and rental costs, and the prices of goods and services

Executive Summary

New York's Litigation Environment

In a wide range of areas, New York law subjects residents and businesses to greater liability than other states. Consider, for example, that:

Unlike most other states, New York allows unlimited noneconomic and punitive damage awards. **New York has among the most nuclear verdicts** (i.e., verdicts $10 million or more) in personal injury and wrongful death cases in the country. Premises liability, medical liability, and auto accident trials most often result in verdicts at these high levels.[3]

Ironically, New York caps the amount a victim of a **frivolous personal injury lawsuit can recover at just $10,000**, a level that has not changed in over 40 years.[4]

Fraud appears to be rampant in New York with reports of staged auto accidents, construction-site injuries, and slip-and-fall claims.[5]

New York hosts among the most class action lawsuits.[6] The state is known for **consumer class actions** challenging food and beverage labeling,[7] which have **tripled in recent years**.[8]

New York families pay the second highest tort costs in the nation, over $7,000 per household

New York families pay the second highest tort costs in the nation, over $7,000 per household, which is 67% above the national average of $4,207.[9]

In nearly every category of insurance coverage – from healthcare to construction – **insurance premiums** (and the losses that drive them) are **higher in New York than any other state**[10] On average, New Yorkers pay over $4,000 annually for full auto coverage, nearly $1,500 above the national average and among the highest amounts in the country.[11]

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New York's **doctors and hospitals consistently face the highest medical liability payouts** per capita and highest total payouts in the country,[12] affecting the availability of affordable healthcare.

For these reasons and others, the American Tort Reform Foundation has consistently named **New York City a "Judicial Hellhole"** — a jurisdiction that is systemically imbalanced against defendants in civil litigation.[13]

New York is Losing Residents & Businesses

Excessive lawsuits and liability impact both the affordability of living in New York and the competitiveness of New York's businesses.

New York's population is down about 3% since the start of the decade, even as the U.S. population

rose by 2.6%.[14] New York faces the largest population decline of any state.[15]

While some New Yorkers depart for more affordable living nearby, many leave for Florida and Texas,[16] which have adopted the types of reforms suggested in this paper. Over the past twenty years, New York has lost about 10% of its working-age population, a trend that is projected to continue.[17]

New York is also facing an exodus of businesses due to the rising cost of operating in the state. Major employers are trimming back their workforce and some businesses are moving their headquarters elsewhere.[18]

New York City lost about 5,000 businesses since last spring, the largest decline since the pandemic. Small business owners have been particularly hard hit.[19]

Unless there is a course correction, businesses facing a scarcity of labor and high costs may shift their operations to other states.

Longstanding Problem Areas

This paper examines five areas in which New York's liability laws are out of the mainstream and suggests reforms that would foster a more balanced litigation environment and advance the interests of New Yorkers.

Comparative fault

Under New York's "pure comparative fault" system, individuals who are largely responsible for their own injuries can still recover damages, a minority approach among states. This approach rewards reckless behavior.

New York should amend CPLR § 1411 to adopt "modified comparative fault," which bars recovery when a plaintiff is primarily at fault, while reducing damages proportionally in other cases. The FY 2026-27 budget includes this change, but for motor vehicle accident claims only.

Joint and several liability

In New York, a person can sue and recover the full amount of damages from a single defendant, even when that party bears only minimal responsibility – a system most states have abandoned or limited.

While New York distinguishes between economic and noneconomic damages, significant exceptions remain — particularly in auto cases — often leaving low-fault defendants liable for disproportionate shares. **This framework incentivizes "deep pocket" lawsuits.**

New York should amend CPLR § 1601 to take an approach consistent with states such as New Jersey and Pennsylvania. At minimum, it should eliminate the auto exception found in CPLR § 1602.

The Scaffold Law

New York is the **only state that imposes "absolute liability"** on property owners and contractors when a worker experiences an elevation-related injury, such as a fall or a falling object. The Scaffold Law raises the cost of projects ranging from school construction to

affordable housing.

New York should enact a new provision of the Civil Practice Law & Rules that permits juries to consider the responsibility of all parties involved in a construction accident, just as they do in other personal injury cases.

Predatory and undisclosed litigation funding

New York recently took its first steps to regulate "lawsuit loans," but **significant gaps remain** in addressing both consumer protection and broader litigation funding practices.

> *New York is the only state that imposes "absolute liability" on property owners and contractors when a worker experiences an elevation-related injury*

New York should amend Article 10 of the Financial Services Law to strengthen protections against predatory lawsuit loans, regulate commercial litigation funding, and require full disclosure of all litigation funding agreements.

An excessive judgment interest rate

New York applies a **9% interest rate to judgments, which the state has not adjusted in 45 years**. This high rate penalizes those who defend themselves in court.

New York should amend CPLR § 5004 to replace this fixed rate with one indexed to market rates, as in most other states.

Additional Opportunities for Reform

The paper explores three other helpful measures, enacted as part of the FY 2026-27 state budget, that should help make driving in New York more affordable:

Expand efforts to **combat fraudulent lawsuits** and insurance claims.

More objectively **define what constitutes a "serious injury,"** as provided by Insurance Law 5102(d), to avoid unnecessary auto accident lawsuits that should be compensated through the PIP system.

Limit payouts to drivers who were uninsured or engaged in illegal conduct at the time of an accident.

Avoid Going in the Wrong Direction

Equally important to adopting positive reforms is for New York to avoid policies that expand litigation or liability. Legislators should:

Reject invitations to adopt private rights of action, which can shift enforcement from publicly accountable regulators to private attorneys and contribute to excessive and often speculative lawsuits.

Abandon proposals to broadly expand emotional harm damages available in wrongful death cases, which Governor Hochul has vetoed four times.

Not further expand the state's consumer protection law, which is already a significant source of excessive litigation that primarily benefits the attorneys who file these claims.

End legislative efforts to **subject out-of-state companies to lawsuits in New York** courts for conduct unrelated to the state.

Reject the latest plaintiffs' lawyer wish list, wrapped in a recently introduced bill.

Collectively, this paper's recommendations aim to improve fairness, reduce litigation, and improve affordability for all New Yorkers.

Move to "Modified" Comparative Fault

In New York, a person who is largely responsible for his or her own injury can still recover damages. This system, known as pure comparative fault, encourages personal injury attorneys to file or threaten lawsuits by irresponsible plaintiffs. Few states follow this approach, which New York is on the cusp of replacing.

The Shift from Contributory Negligence to Comparative Fault

Traditionally, a person who was even minimally responsible for his or her own injury could not recover damages. A plaintiff's contributory negligence provided a complete defense to liability. Today, just four states and the District of Columbia retain this system, which can have harsh results for plaintiffs.[20]

Beginning in the late 1960s, states began to **abandon contributory negligence for comparative fault.** Under this alternative, a person whose conduct contributed to his or her injury can **recover damages,** but the law **reduces the amount by the plaintiff's percentage of fault.**

Comparative fault laws vary from state to state. About a dozen states take the most plaintiff-friendly approach, known as "pure" comparative fault.[21] Under this system, a plaintiff can recover 1% of his or her damages even if that person is 99% at fault for his or her own harm. This swings the pendulum in the complete opposite direction from contributory negligence.

Two-thirds of states have instead adopted **"modified comparative fault,"** including all of New York's neighbors.[22] Generally, under this approach, a person's damages are reduced to **reflect his or her degree of fault,** but when a jury finds the plaintiff is the primary cause of harm, 50% or 51% responsible depending on the state, he or she cannot recover damages.

New York Law: An Outlier

New York is one of the few states that has the **most plaintiff-friendly approach**. The Empire State shifted from contributory negligence to **pure comparative fault in 1975** with the adoption of CPLR § 1411.

Implications

Pure comparative fault rewards risky behavior by allowing plaintiffs to recover damages even when they are substantially at fault for their own injuries. It also encourages speculative litigation by providing an **incentive for plaintiffs' lawyers to "roll the dice**" by bringing or threatening lawsuits on behalf of people who are responsible for their own injuries. They know that a person or business, or insurer, is likely to settle the claim given the high cost of litigating a case to verdict and the likelihood of a monetary award.

By way of contrast, **modified comparative fault facilitates settlements and discourages weak claims** because personal injury lawyers realize that there is at least some risk that a reckless client may recover nothing.

> *This change has contributed to substantial auto insurance rate reductions for Florida drivers*

These concerns are particularly salient in the auto context. For example, **Florida**, struggling with among the highest auto insurance costs in the nation**, is the most recent state to replace pure comparative fault with a modified comparative fault system.**[23] Over the past two years, this change has contributed to substantial auto insurance rate reductions for Florida drivers and greater competition as more insurers enter or reenter the market.[24]

Recommendation

New York should join the mainstream by amending CPLR § 1411 to adopt a modified comparative fault system. In May 2026, Governor Hochul signed a transportation budget bill taking this approach, but that applies only to motor vehicle accident claims.[25] This is a significant step forward. Ultimately, the same rule should apply to all tort claims.

Better Align Liability with Responsibility

Joint and several liability allows a plaintiff to collect the full amount of a judgment from a single defendant whose conduct contributed, in any way, to an accident. This law **encourages personal injury lawyers to sue as many parties as possible,** especially those viewed as having the most money, even if that party is least to blame. Most states have abandoned this system, though New York keeps it in place in many cases.

Most States Have Abandoned Joint & Several Liability

Most states have abandoned or sharply limited joint and several liability. Today, only a few states apply full joint and several liability, most of which also retain contributory negligence as a defense.[26]

Roughly half of states have adopted "pure" several liability, in which a defendant pays its fair share of damages based on the percentage of fault assigned to that defendant by the jury.[27]

About a dozen states have **abolished joint and several liability when a defendant's level of fault is below a certain threshold**, typically when for those that are less than 50% or 51% at fault.[28] New Jersey and Pennsylvania subject only defendants that are 60% or more at fault to paying a plaintiffs' full damage award.[29]

New York Law

New York moved away from full joint and several liability in 1986 when it adopted CPLR § 1601. It is now one of a handful of states that distinguishes between economic and noneconomic damages in what rule applies.[30] Under New York law, minimally culpable defendants are liable for a plaintiff's full economic damages, such as medical expenses and lost income.

For noneconomic damages, such as an award for pain and suffering, low-fault defendants are liable only for their actual assessed share of liability unless they are more than 50% responsible, in which case they may be required to pay the entire award.

In addition, **New York retains full joint and several liability in** several areas, including personal injury claims stemming from **auto accidents**.[31] New York law also lifts its limited restriction on joint and several liability if a jury finds a defendant acted recklessly, knowingly, or intentionally.[32] The practical effect of these and other exceptions is that many individuals and businesses are subject to more than their fair share of a plaintiff's damages.

Implications

Joint and several liability encourages personal injury lawyers to **target "deep pocket" businesses** or those that may have the greatest insurance coverage, even when others are far more culpable for a client's injury.

In the auto liability context, this means that if a plaintiff obtains a $1 million noneconomic damage award and there are two defendants—one with millions of insurance coverage that is found 1% responsible and one with a $100,000 policy that is 99% at fault—the first defendant must pay $900,000 (rather than $10,000 based on its share of responsibility).

Imposing joint and **several liability has fiscal implications not only for businesses, but also for taxpayers.** Cities and towns in New York are forced to pay a plaintiff's entire damage award on the basis that, for example, a traffic signal,[33] sign,[34] or city employee,[35] in some remote way, contributed to the accident.

Recommendation

New York should amend CPLR § 1601 to adopt pure several liability for all damages or retain joint and several liability only when a defendant is 60% or more at fault for a plaintiff's injury, similar to New Jersey and Pennsylvania, or 50% or more at fault, which other states follow. It should also eliminate most exceptions that retain full joint and several liability in some circumstances, including the carve out for auto accident claims in CPLR § 1602.

Governor Hochul supported a move in this direction, which she expected to result in lower auto insurance premiums.[36] This proposal, however, was not included in the 2027 FY state budget agreement, leaving an opportunity for future action.

End Absolute Liability Under the "Scaffold Law"

The cost of construction projects in New York is significantly higher than in other states because of New York's unique century-old **"Scaffold Law," which pre-dates the workers' compensation system and imposes "absolute liability"** on property owners and contractors. From building schools to affordable housing, the Scaffold Law imposes steep costs not experienced in any other state, while providing no safety benefit.

New York's Scaffold Law

New York enacted the Scaffold Law, N.Y. Labor Law § 240 in 1885 to safeguard construction workers who found themselves subject to increased danger while working on the city's skyscrapers and other projects.[37]

The intent of the law was to reduce height-related deaths and injuries by mandating the use of safety equipment. **Occupational Safety and Health Administration regulations now largely serve this function**.[38]

While the text of the Scaffold Law does not mention creating a right for workers to sue, the New York Court of Appeals has interpreted the statute to impose "absolute liability" for elevation or gravity-related risk, such as falls and falling objects, on construction sites,[39] including buildings, bridges, or elevated highways. Over time, courts have vastly expanded this liability.[40] **Juries cannot consider a worker's carelessness or recklessness, which courts consider irrelevant.** Even a worker's impaired condition because of drug or alcohol use at work is not a factor in liability.[41]

Even a worker's drug or alcohol use at work is not a factor in liability

In other states, and in New York for other on-the-job injuries, **workers' compensation provides no-fault payments for injured workers' medical care** and provides benefits based on a percentage of lost wages while a person is disabled, while limiting an employer's liability.[42]

The Scaffold Law, however, pre-dates workers' compensation and falls outside of its liability constraints. It **subjects those who work in the construction industry and beyond to litigation** over work-related injuries that would not be filed in court elsewhere. Plaintiffs may seek past and future lost wages and medical expenses as well as unlimited awards for pain and suffering that are highly subjective and unpredictable.

The **Scaffold Law applies in situations that most people would not consider an elevation-related construction risk.** Examples include falls from a sixteen-inch tall boulder on a basement floor,[43] a flatbed truck,[44] a ladder when installing carpeting on the walls of a recording studio,[45] and a ladder while disassembling a chupah, a canopy for a Jewish wedding, at a catering hall.[46]

Property owners and contractors named in Scaffold Law claims can defend themselves on the basis that the worker was the sole proximate cause of the accident,[47] but that is an extraordinarily high standard to meet.[48]

A **worker may be 99% responsible for his or her own accident, but the owner or contractor must still pay 100%** of the damages. Contractors who invest in safety equipment, run strong safety programs, and enforce the rules face the same liability under the Scaffold Law as those who cut corners and put workers at risk.

For example, a nonprofit housing developer can face l**iability even when a worker removes his safety harness** to take a shortcut into a construction site **that the contractor explicitly prohibited**.[49]

As an expert on New York construction law observed, "Over the course of the last century, the court has taken a statute designed to protect workers who were unable to protect themselves from the extraordinary hazards of working at or raising materials and loads to heights, and turned it into a **remedy for every injury caused by gravity that a safety device might have, in hindsight, prevented.**"[50]

No other state has a comparable statute.

Implications

Because of over a century of judicial expansion of the Scaffold Law, these claims have become more frequent. Cornell University researchers showed that **between 1990 and 2012, Scaffold Law cases rose 500% while the overall rate of injury decreased**.[51]

Scaffold Law claims are among New York's largest verdicts and settlements each year.[52] According to Willis Towers Watson, an **average Scaffold Law claim will settle for above $1 million**, however, if there is a neck or back surgery alleged, the claim value averages between $2 million to $3 million, or more.[53] Settlement values for these claims doubled between 2018 and 2023.[54]

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The ease at which workers can recover large sums for on-the-job injuries has led to a lucrative market for lawsuits. Personal injury law firms distribute t-shirts, leaflets, and business cards at construction sites advertising their services.[55] Many New York personal injury law firm websites devote sections to Scaffold Law claims, as they compete for these highly profitable cases. Some of these firms tout multi-million dollar verdicts and settlements.[56]

The law's lax standards and the irrelevance of a workers' fault for his or her own injuries have led to **suspicious claims**, particularly a surge of lawsuits alleging **low-height falls, with no witnesses, filed by new workers**.[57]

A media investigation identified dozens of construction injury lawsuits suspiciously filed by people purporting to live in the same apartment buildings and homes.[58] **Insurers have responded by filing several civil RICO lawsuits** alleging schemes to capitalize on the Scaffold Law's absolute liability by faking accidents and injuries.[59]

Insurance for construction projects in New York consume 8% to 10% of costs, compared to just 2% to 4% in New Jersey, Massachusetts, and Illinois

These lawsuits generally allege that runners for law firms persuade vulnerable individuals to stage a fall, then send them to unscrupulous doctors for unnecessary surgeries to raise the settlement value with the cost covered by predatory lawsuit loans. One personal injury law firm sought to withdraw from hundreds of construction injury cases after questions were raised about the cases' legitimacy.[60]

The Scaffold Law has consequences for New Yorkers, including a rise in costs for renters and homeowners.[61] One recent study estimates that **insurance costs for construction projects are two to five times higher in New York** than other states and consume 8% to 10% of total development costs in New York, compared to just 2% to 4% in states like New Jersey, Massachusetts, and Illinois.[62]

The **excessive liability** imposed by this statute adversely affects projects ranging from affordable housing[63] to school construction.[64] It has **added hundreds of millions of dollars to the cost** of projects such as the Gov. Mario M. Cuomo Bridge[65] and Hudson River Tunnel construction project,[66] and impacts other major public projects such as Penn Station's development and the Second Avenue Subway extension.[67]

It has even hindered disaster relief efforts.[68] As the New York Building Congress observed, the higher insurance costs necessitated by this law "means less money for roads, SUNY facilities, and other worthwhile construction projects sponsored by State agencies" as well as fewer classrooms and less money to improve public facilities.[69] It also means far less affordable housing units built each year.[70]

Due to the Scaffold Law, most national insurers do not write construction policies in New York. Some of the few remaining insurers have stopped writing policies in the last few years, and the **number of carriers willing to write general liability insurance in New York continues to decline**.[71]

The Scaffold Law's **excessive liability** does not lead to greater worker safety—quite the opposite. Absolute liability eliminates an incentive for employers to invest in workplace safety.[72]

It also **does not encourage workers to be careful,** since they can recover in a lawsuit even when they engaged in reckless behavior, such as working while under the influence of alcohol or drugs.[73]

Recommendation

New York should enact a new section of the Civil Practice Law & Rules that applies the same rule of comparative negligence used in most personal injury cases to claims arising under the Scaffold Law.

This would allow juries to consider the responsibility of all parties involved in a construction accident—including whether the worker used safety equipment or devices provided at the job site, followed safety instructions, or was impaired by drugs or alcohol. Legislators have repeatedly introduced such bills.[74]

Strengthen Litigation Funding Protections

New York recently enacted a law that makes progress in addressing litigation funding, particularly the kind that offers vulnerable individuals "fast cash" while they await a settlement in personal injury lawsuits.

That law is a solid step forward, but New York needs to both strengthen this law and take additional steps to address the influx of hidden outside money into the state's civil justice system.

The Lawsuit Loan Industry

A form of outside investment in litigation is referred to by lenders as **"pre-settlement advances."** In these arrangements, **lenders provide money to vulnerable consumers who have filed personal injury lawsuits**, such as auto accident or slip-and-fall cases, for personal expenses.

Brooklynite borrowed $27,000 and reportedly received just $111 of a $150,000 settlement

Often, recovery is all but certain and, in some instances, the only question is when the settlement check will arrive. Industry representatives say that the **average loan is about $3,000 to $5,000**,[75] but the amounts can be far greater. In exchange, many lenders charge **high interest rates and fees**.

At payback, a **consumer may owe the lender three, five, or even ten times the advanced amount.** There are many examples of harm to New Yorkers from predatory cash-for-lawsuit

lending.[76] In one reported case, a Brooklynite who borrowed $27,000 while his slip-and-fall case was pending reportedly received just $111 of a $150,000 settlement after paying the lender and his attorney.[77]

Even 9/11 first responders have been victims of such practices.

Even 9/11 first responders have been victims of such practices.[78] These arrangements are comparable to payday loans, but, lenders contend, **lawsuit loans are not subject to the same usury laws that apply to payday lending**.[79]

In addition, these arrangements can complicate the ability to resolve litigation as plaintiffs may reject reasonable settlement offers because they understandably expect to receive meaningful recovery from their lawsuit after paying the lender and attorney.

Lawsuit loans have also played a key role in fraudulent litigation in which plaintiffs are alleged to have staged accidents and then given high-interest loans to cover the cost of unnecessary surgeries, treatment, or rehabilitation.[80]

The Litigation Funding Act

Until recently, lawsuit loans were unregulated in New York. New York enacted the **Litigation Funding Act** in 2025, which it amended in 2026.[81]

Now, New York requires companies that engage in this form of lending to **register** with the Department of Financial Services. Contracts must contain certain **information to better inform consumers about how much they may owe** on what may seem like a small loan.

The law ensures that a consumer's attorney is aware of the arrangement and reviews and signs the contract. Lenders are **prohibited from engaging in conduct that poses conflicts of interest,** such as by referring a person who takes a loan to a specific lawyer or medical provider or attempting to influence the litigation or its settlement.

The new **law falls short**, however, in preventing predatory rates. There is **no limit on the interest rate or fees** lenders can charge, no limit on the length of time during which interest can accumulate, and **no real limit on the size of the loan**.

The legislation precludes lawsuit lenders from taking **more than 25% of the plaintiff's total recovery** on top of the amount of the loaned amount, which is a helpful backstop, but still allows lenders to charge excessive rates and fees.

The law also allows **cash advances** of any amount so long as they **do not exceed $500,000**—100 times the level that the lawsuit loan industry claims is typical.

Still Unregulated & Undisclosed Commercial Litigation Funding

In addition, the new law is severely limited in that it **only applies to money provided to individuals who have pending lawsuits**.

Despite its name, New York's "Litigation Funding Act" **does not apply to money provided to law firms to cover litigation expenses**. These arrangements, sometimes referred to as commercial litigation funding, are on the rise.

Commercial litigation funders range from publicly traded lenders to private equity and hedge funds. Investors may fund an individual case, but it is increasingly common for funders to finance a portfolio of cases, such as **product liability or other mass tort lawsuits**.[82]

Investing in litigation has become a multi-billion-dollar industry

The amount of these loans is typically in the millions of dollars.[83] Investing in litigation has quickly become a multi-billion-dollar industry.[84]

Unregulated, hidden commercial litigation funding raises a wide range of concerns. These arrangements, even more so than cash advances, **pose a significant risk of an outside party intruding** on the ability of an attorney to independently represent his or her clients' interests.

While litigation funders often contend that they do not influence litigation or settlement,[85] many situations have come to light that prove otherwise.[86]

A funder may direct attorneys to reject reasonable settlement offers that may be in a plaintiff's best interest and hold out for a higher payment, for example. **Clients may not even be aware that their attorneys have taken outside funding** that will be repaid out of their settlements.

Litigation funders brag that they "make it hard and more expensive to settle cases,"[87] on average "**double their money**," and sometimes walk away with more money from a case than the plaintiff.[88]

The presence of a hidden party with a financial interest in the litigation complicates the ability to resolve cases, erodes the incentive to litigate as efficiently as possible, and can **inflate settlement demands and litigation costs**.[89]

In addition, outside funding may hide the ulterior motives of those who are actually driving the litigation.[90]

It also provides an opportunity for foreign governments and entities, or others, to launder money,[91] obtain sensitive proprietary or national security information,[92] or engage in other nefarious conduct.

The Lack of Disclosure of Litigation Funding in New York

Neither the Litigation Funding Act nor the courts require parties or law firms that accept funding from outside sources in exchange for a financial interest in the recovery **to disclose that information to the court** or other parties in the case.

New York courts rarely allow parties to obtain this information through the discovery process, often finding it not material to the claims or defenses in the action.[93]

As a result of this secrecy, the court, defendant, and other parties in the litigation are unaware that a hidden party is driving the litigation or complicating resolution of the case.

Nor can courts police predatory lending arrangements or identify and evaluate potential conflicts of interest if they do not know an outside funder with a stake in the outcome exists in the case.

Some courts in **other states require disclosure** of litigation funding, including **federal courts in New Jersey and Delaware**.[94] In addition, a growing number of states have enacted legislation requiring parties to disclose arrangements in which an outside funder has a financial interest in the outcome of the litigation to the other parties, insurers, and/or the court.[95]

Recommendations

New York should strengthen the Litigation Funding Act, Article 10 of the Financial Services Law, to protect consumers from predatory lending by setting a maximum interest rate, and limits on the duration and amount of lawsuit loans.

It should also adopt safeguards for commercial litigation funding that prevent conflcts of interest and protect consumer recovery. All litigation funding agreements should be disclosed to the court and other parties.

Index the Judgment Interest Rate to the Market

New York should **reduce** its judgment interest rate **from a fixed 9% to a level indexed to the market** rate so that litigants are not penalized for defending themselves in court.

45 Years Without Adjustment

New York set its 9% rate, which applies to both pre- and post-judgment interest, in 1981,[96] when the average rate for the one-year U.S. Treasury bill was over 14%.[97]

> *9% rate was set in 1981 when the U.S. Treasury bill was over 14%*

It has **remained unchanged for 45 years, even when prevailing market rates were below 2%.** While interest rates have risen in recent years, they remain well below 9%.

Implications

New York's fixed rate is "both illogical and unfair" and "does not reflect the changing economic reality of the cost of money," an advisory committee to the state's chief administrative judge observed over a decade ago.[98]

An **excessive judgment interest rate adds to the pressure on a defendant to settle** litigation, regardless of the merits. It also weighs against appealing an erroneous court decision as interest continues to accumulate.

Interest on a judgment can accumulate quickly and **reach into the hundreds of thousands—even millions—of dollars.**

The time it takes to litigate a case is affected by many factors, including factors beyond a defendant's control, such as the cooperativeness of plaintiff's counsel, the complexity of the case, the trial court's docket, or delays that a defendant did not cause and cannot control (such as court closures during the COVID-19 pandemic and resulting trial backlogs).

Post-judgment motions and appeals (which may be brought by the plaintiff, the defendant, or both) may also add time to the litigation. Appeals may face backlogs. The Appellate Division, Second Department, for example, the busiest state appellate court in the nation.[99]

> *New Jersey adopted a variable rate that, in 2026, is 4.5%*

New York's interest rate not only penalizes private parties, but directly **impacts city and county governments**, which are often the targets of litigation, and, by extension, **taxpayers**.[100] As the New York State Conference of Mayors has observed, "This excessively high interest rate drives up taxpayer costs."[101]

Out of the Mainstream

Most **states have abandoned high fixed judgment interest rates**, making New York an outlier. For example, New Jersey eliminated a fixed 12% per annum rate in 1986 and adopted a variable rate that, in 2026, is 4.5% on judgments exceeding $20,000.[102]

Pennsylvania applies a variable pre-judgment interest rate that is the **prime rate plus one percent** along with a fixed post-judgment interest rate of 6%.[103] In recent years, other states have adopted similar approaches.[104] Only about a **dozen states retain a fixed judgment interest rate at or above New York's level**.[105]

In addition, unlike New York where pre-judgment **interest begins to accrue when at the earliest possible momen**t a cause of action exists, in nearly every other state, pre-judgment interest, if available, does not begin to accrue until a plaintiff files a lawsuit, serves a defendant, or a later date.[106]

Recommendation

Amending CPLR § 5004 to adopt a variable rate would bring New York into alignment with most other states.

This approach would not only protect civil defendants from excessive judgment interest awards, but safeguard plaintiffs from being undercompensated in the future should market rates rise. It also eliminates the need for the legislature to periodically revisit and adjust the fixed rate (an increasing risk given the volatility of the contemporary interest rate environment).[107]

Additional Opportunities to Make Auto Insurance More Affordable

Governor Hochul has reached an agreement with the legislature to enact a set of initiatives aimed at reducing auto insurance rates.

This helpful package of legal reforms includes updating New York's comparative fault law, as discussed earlier, along with addressing three additional areas that unnecessarily drive up costs.

Stop Rampant Fraud

In 2025, the Department of Financial Services (DFS) recorded 43,811 suspected **auto insurance fraud incidents, an 80% jump from 2020**.[108] There were also at least 1,729 staged crashes in New York State, an amount that has also been on the rise.[109] New York ranks second highest in the nation for incidents of staged fraud.[110]

> *New York ranks second highest for staged fraud*

In response, the enacted FY 2026-27 state budget includes anti-fraud measures targeting auto insurance as well as workers' compensation schemes.[111]

The new law provides that anyone who hires, requests, encourages, orchestrates, or invites another individual to stage a motor vehicle accident commits a fraudulent act.[112]

This provision is intended to enable **prosecutors to seek criminal penalties against any person** involved in organizing a staged accident, not just the driver.[113]

Governor Hochul had proposed several other measures, which did not make it into the final bill, such as **increasing the ability to prosecute others who facilitate staged accident claims** such as by providing **false medical diagnoses** or treatment, doubling the 30-day period that New York Insurance Law 5105(a) provides insurers to investigate and report suspicious claims,[114] and raising criminal penalties for insurance fraud. These are potential areas for future action.

In addition, New York can do more to combat fraud in other contexts. For example, **pending legislation would make staging a construction site accident a felony**.[115]

Reduce Unnecessary Auto Accident Litigation

New York law should amend the threshold for allowing lawsuits seeking damages for "serious injury" outside the PIP system to **eliminate vague language that leads to unnecessary litigation** that drives up insurance rates.

New York is a no-fault state, which means that the primary coverage for **medical benefits, lost wages,** and other covered expenses for drivers and their passengers i**s provided by each driver's own insurance, regardless of who is at fault** in an auto accident. This is handled through **PIP coverage, which is mandatory in New York.**

If a person experiences a **"serious injury"** in an auto accident, however, he or she **can seek compensation from a responsible party through the tort system**, including noneconomic damages and economic losses exceeding PIP limits.

This approach is intended to provide prompt recovery for minor injuries following a crash, avoid litigation, and help keep insurance rates stable and affordable.

While New York's definition of **"serious injury"** lists types of harm that all would agree should meet the threshold, it also **includes temporary, subjective injuries**. For example, the definition includes a **nonpermanent** injury that **prevents** a person from **performing** usual and customary **daily activities for 90 days during the 180 days** immediately following an accident.[116]

This **"90/180" category can be easily manipulated** by, for example, a person finding a medical provider willing to certify that he or she cannot work or perform other activities for 90 days. It is most often invoked in **soft-tissue injury cases** based largely on **subjective complaints** when objective evidence of an injury, such as diagnostic imaging, is lacking.[117]

> *"90/180" category is invoked in soft-tissue injury cases when objective evidence is lacking*

The enacted budget bill amends Insurance Law 5102(d) to eliminate the "90/180" category.[118]

This change will provide greater consistency and predictability in auto accident claims and should lower costs that impact insurance premiums.[119]

Do Not Reward Bad Behavior

The enacted FY 2026-27 budget also includes Governor Hochul's proposal to limit the ability of drivers who were **uninsured, driving while impaired, or committing or fleeing a felony** at the time of an accident to recover a large payout.

> *Drivers committing a felony can no longer recover unlimited pain and suffering awards*

These drivers **can recover their full medical expenses and lost wages**, but no more than $100,000 for pain and suffering.[120]

Proposals that Take New York in the Wrong Direction

It is important for New York to take positive steps that address the excessive liability and litigation abuse, some of which are highlighted in this paper. It is also important for New York to reject invitations that would take the Empire State in the wrong direction by unnecessarily adopting private rights of action, expanding damages, or increasing opportunities to bring lawsuits.

These types of proposals, which have been recycled for years, serve the interests of attorneys, not the public.

No New Private Rights of Action

The legislature should **closely scrutinize proposals that would provide new ways to sue** in New York's already highly litigious climate.

When private rights of action are included in legislation, they deputize profit-motivated lawyers to enforce state law rather than keep authority in the hands of accountable public officials.

> *Excessive litigation can target small businesses or stymie innovation*

These proposals can be especially problematic when they discard or significantly relax key elements of claims (such as causation), eliminate the need for a person to have experienced an injury to sue, provide for statutory (minimum) damage awards rather than reimburse actual losses, or pay attorneys' fees that are typically not recoverable in ordinary civil litigation.

The excessive litigation that results can target small businesses or stymie innovation.

Many bills introduced in the New York legislature include **private rights of action**. These include bills addressing **data privacy** [121] and use of **artificial intelligence** technology.[122]

Another bill would allow people who have no present injury to seek **medical monitoring damages**,[123] violating the core principle of tort law that uninjured people cannot bring lawsuits based on **speculative concerns about the future**.

Other proposals authorize lawyers to bring new **lawsuits against insurance companies**[124] and **social media companies**.[125] Legislation would also **allow any person to sue any "fossil fuel industry member"** for damages on the basis that it contributed to climate change.[126]

When legislators are presented with such proposals, they should carefully consider whether the requirements or prohibitions in the bill can be more effectively, fairly, and consistently enforced through government agencies and officials and whether existing common law or statutes already provide a means for people who experience actual harm to recover.

Often, however, these proposals primarily will benefit lawyers, rather than solve problems or help New Yorkers.

Hold the Line on Subjective Damages in Wrongful Death Lawsuits

Despite four vetoes, the New York legislature has persisted in advancing a bill, known as the "**Grieving Families Act**," that would **radically expand liability** under the state's Wrongful Death Act, including who can sue, for how much, and for how long. This legislation was reintroduced on May 4, 2026.[127]

Most concerning is the legislation's abandonment of New York's requirement that damages be quantifiable and pecuniary in nature.

Instead, the proposal **authorizes forms of noneconomic damages** that have long been unavailable in New York, such as **loss of companionship**, as well as **grief and anguish** caused by the decedent's death.

While the grief felt due to the loss of a loved one cannot be disputed, emotional pain experienced by those not directly injured is not recoverable because of the difficulties in ensuring that juries decide cases based on facts and not sympathy. Emotional losses are speculative and such damages are highly susceptible to manipulation by attorneys. New York already hosts among the most "nuclear verdicts" in the country,[128] which largely stem noneconomic damages that are at levels that most people would not earn in several lifetimes.[129]

Widely opening the door to such awards in wrongful death cases will exacerbate this problem.

Most states do not permit family members to collect **damages for grief or mental anguish** in wrongful death suits.[130] Many of the states that do allow broader forms of nonpecuniary damages, unlike New York, have **statutory limits on damages** in their wrongful death acts, generally applicable caps on noneconomic damages, or limits that apply in medical liability actions.

> *2021 version of the bill would have increased medical liability costs by nearly 40%, general liability costs by about 11%, and auto insurance costs by 6%*

An actuarial analysis of the Grieving Families Act estimated that, if enacted, the legislation is likely to result in a significant increase in insurance costs for New Yorkers.[131] The research report projected that the 2021 version of the bill would have increased medical liability costs by nearly 40%, general liability costs by about 11%, and auto insurance costs by 6%.[132]

As Governor Hochul observed in her most recent veto message, "At a time when the state is facing an affordability crisis, and many struggle just to meet basic needs, genuine concerns continue to be raised that the bill may lead to increased costs, including increased insurance premiums and increased financial stress to our health care systems, including those that serve disadvantaged communities."[133]

Do Not Facilitate More Consumer Class Actions

New York, like other states, prohibits deceptive business practices and false advertising.[134] Each year, those laws provide the foundation for numerous lawsuits.

In fact, New **York leads the nation in consumer class actions** targeting food, beverages, supplements, and personal care products, exceeded only by California.[135]

Many of these **lawsuits do not respond to real issues** where consumers were actually misled into purchasing a product, but attempt to extract a nuisance settlement from businesses based on a dispute about the product's label.[136]

> *Consumer and Small Business Protection Act," would make the state's consumer law the most expansive in the nation*

Rather than address the overwhelming amount of consumer class action lawsuit abuse in New York, legislators have repeatedly introduced the so-called **"Consumer and Small Business Protection Act,"** which would arguably make the state's consumer law the most expansive in the nation. Under the guise of "modernizing" that law, the bill makes five significant changes.[137]

First, the bill adds prohibitions against "unfair" and "abusive" practices to the law. These **vague terms would result in even more litigation**.

Second, the legislation **increases statutory damages** (which can be obtained without showing actual loss) from $50 to $1,000 per violation and make these damages available in class actions. This would allow lawyers to **threaten businesses with astronomical liability** even when there is no injury.

Third, the bill allows judges to **unilaterally increase damages** to any amount if the judge finds a knowing or willful violation (current law already allows judges to triple actual damages up to $1,000). Courts would be required to award attorneys' fees to every prevailing plaintiff, rather than leave such awards to a court's discretion when appropriate.

Fourth, the bill strips out a requirement in current law that a violation impacts consumers (which avoids misuse of the statute and its already generous remedies in other civil litigation, like contract disputes).

Finally, the bill **empowers advocacy groups to sue on behalf of the public,** an approach taken in only one jurisdiction, the District of Columbia. One newspaper called the bill, "purely a giveaway to class-action lawyers."[138]

In December 2025, Governor Hochul signed an **alternative bill** that includes two of the provisions above. The Fostering Affordability and Integrity through Reasonable (FAIR) Business Practices Act added "unfair" and "abusive" acts to the statute and eliminated the law's exclusive application to consumer-oriented conduct.[139]

Significantly, however, the **legislation empowered the attorney general to interpret and enforce these provisions, not**

private lawyers. With this bill signed into law, it remains to be seen whether New York's plaintiffs' bar will continue its advocacy for more extreme changes.

Do Not Enable Litigation Tourism

Another proposal, three times vetoed by Governor Hochul, would subject any corporation that registers to do business in New York to what is known as "general personal jurisdiction" in state courts.[140]

If enacted, **attorneys could bring lawsuits against businesses** stemming from conduct that is **unrelated to their activities in New York in New York courts** that they view as more favorable to them on the basis that they "consented" to jurisdiction by registering.

This bill would have overturned a New York Court of Appeals' decision.[141] It threatened to make the **state a magnet for litigation from across the country.**

Not only would this burden the state's judiciary and taxpayers, but it could also lead to delays for New York residents with legitimate local cases.

While the U.S. Supreme Court has found this approach is constitutionally permissible,[142] it is unsound public policy and not used in the vast majority of states.

As Governor Hochul observed in her December 2025 veto message, the proposal would "likely deter out-of-state companies from doing business in New York by subjecting them to lawsuits in the State regardless of any connection to New York." She concluded that the bill would "cause undue uncertainty" for businesses and "burden the state's court system."[143]

Reject the Latest Plaintiffs' Lawyer Wish List

Possibly in retaliation for Governor Hochul's support of liability reforms, legislation was recently introduced that includes a package of changes to New York's liability laws that can only be viewed as a personal injury lawyers' wish list.

This bill, introduced in April 2026 as **S.10035, would tip the scales toward plaintiffs and against defendants** in civil litigation by:

Significantly **extending the amount of time** lawyers have to file lawsuits against healthcare providers.

Giving plaintiffs' lawyers a right to **schedule depositions before defendants may question a plaintiff's witnesses** in personal injury cases.

Allowing plaintiffs' lawyers who plan to file a personal injury case to **subpoena individuals or businesses for information even before they file a lawsuit** in some circumstances.

Creating new sanctions and presumptions that can be imposed on defendants if they fail to preserve evidence, known as spoilation.

Shielding third party litigation funding arrangements from disclosure in litigation.

Prohibiting licensed professions, such as healthcare providers, and their clients from entering agreements to **arbitrate or mediate disputes**.[144]

Conclusion

New York's liability laws are badly out of step with most other states, imposing excessive costs that reverberate throughout the state's economy and make life less affordable for families and businesses.

As this paper demonstrates, outdated doctrines such as pure comparative fault, expansive joint and several liability, and absolute liability under the Scaffold Law collectively incentivize litigation rather than responsible behavior.

While the state has taken modest steps toward addressing predatory lawsuit loans that harm consumers, more needs to be done to address the influx of outside money that is pouring into the civil justice system. And New York's fixed judgment interest, which is not tied to economic reality, imposes unwarranted costs on litigants.

These policies fuel higher insurance premiums, inflate public construction costs, and invite lawsuit abuse—all while doing little to improve safety or fairness.

At the same time, proposals to expand liability even further through new private rights of action, broader subjective damages in wrongful death suits, and expanded jurisdiction threaten to worsen these problems.

Governor Hochul's proposed auto liability reforms illustrate how targeted, pragmatic changes can reduce costs while preserving core protections for injured New Yorkers. The legislature ultimately enacted only some of her relatively modest proposals, leaving more work to be done.

New York stands at the crossroads.

By modernizing its liability framework and adopting targeted, commonsense reforms, the legislature can restore balance to the civil justice system without undermining the ability of truly injured individuals to recover.

Conversely, continuing down a path of ever-expanding liability will deepen the state's affordability crisis and erode confidence in its legal system. Policymakers should seize this opportunity to recalibrate New York law so that liability better aligns with responsibility, deters fraud, attracts and retains employers, and supports a more affordable and sustainable future for all New Yorkers.

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101 See Testimony of the New York State Conference of Mayors, Peter A. Baynes, Executive Director, Before the Joint Fiscal Committees' Hearing on the Executive Budget, at 7 (Jan. 30, 2017).

102 N.J. Ct. R. 4:42-11 (setting the pre- and post-judgment interest rate as annual post-judgment interest rate as equal to the average rate of return for the State of New Jersey Cash Management Fund for the preceding fiscal year, rounded off to the nearest whole or one-half percent, but not less than 0.25%); see also N.J. Courts, Post-Judgment and Pre-Judgment Interest Rates, https://www.njcourts.gov/sites/default/files/courts/civil/postprejudgmentrates.pdf (rev. Jan. 23, 2026) (providing historic annual judgment interest rates).

103 42 Pa. Cons. Stat. § 8101; 41 Pa. Stat. § 202; Pa. R. Civ. P. 238.

104 See, e.g., S.B. 544 (2019) (Ark. 2019) (amending Ark. Code § 16-65-114 to replace a 12% fixed judgment interest rate in favor of the Federal Reserve primary credit rate plus 2%); S.B. 75 (Kan. 2023) (amending Kan. Stat. Ann. § 16-201 to replace a 10% fixed post-judgment interest rate with the federal discount rate plus 2%); H.B. 223 (Ky. 2017) (amending Ky. Rev. Stat. § 360.040 to reduce a 12% fixed rate to 6%); S.B. 293 (Mont. 2017) (amending Mont. Code Ann. §§ 25-9-205, 27-1-210 to replace a 10% fixed rate with the prime rate plus 3%; H.B. 2678 (W. Va. 2017) (amending W. Va. Code Ann. § 56-6-31 to lower the pre-judgment interest rate for special or liquidated damages and post-judgment interest rate from no lower than 7% or higher than 11% to 2% above the Fifth Federal Reserve District secondary discount rate, provided the rate does not fall

below 4% or exceed 9%).

105 Other outlier states include California, Connecticut, Hawaii, Illinois, Maryland, Massachusetts, New Mexico, Oregon, Rhode Island, South Dakota, Vermont, and Wyoming.

106 See, e.g., N.J. Ct. R. 4:42-11 (later of the date of institution of the action or a date six months after the date the cause of action arises); Pa. R. Civ. P. 238(a)(2) (one year after date original process was first served, excluding the period in which defendant made a compliant written settlement offer or in which the plaintiff caused delay of the trial).

107 While recent legislation reduced the judgment interest rate to 2% for certain consumer debt cases, but otherwise left the standard 9% rate unchanged. S.5724A, 2021-22 Leg. Sess. (enacted Dec. 31, 2021) (amending N.Y. C.P.L.R. § 5004).

108 Gov. Kathy Hochul, Governor Hochul Rallies with Leaders and Advocates to Highlight Auto Insurance Reform Proposals as Support Grows, Mar. 18, 2026.

109 See id.

110 See id.

111 See A. 10005-C / S. 9005-C, 2025-26 Leg. Sess. (signed May 27, 2026).

112 Id., Part F, § 1 (amending N.Y Penal Law § 176.05).

113 Gov. Kathy Hochul, Press Release, Governor Hochul Secures Reforms to Lower Auto Insurance Premiums for New Yorkers, May 27, 2026.

114 See FY 2027 New York State Executive Budget, Transportation, Economic Development and Environmental Conservations, Article VII Legislation, Part FF, at 158 (proposing amendment to Ins. Law 5105(a)).

115 A. 3800 / S. 5231, 2025-26 Leg. Sess.

116 The full current definition of "serious injury" is "a personal injury which results in 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." Ins. Law 5102(d).

117 Brian W. Webb & Dan D. Kohane, Governor's Tort Proposals Present Legitimate Solutions, N.Y.L.J., Feb. 27, 2026.

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119 New Jersey similarly narrowed its definition of "serious injury" for claims that can proceed outside that state's the PIP system in 1998. See N.J. Stat. Ann. § 39:6A-8(a).

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121 A.4947, 2025-26 Leg. Sess.

122 S.1169A / A.8884, 2025-26 Leg. Sess.

123 S.7474, 2025-26 Leg. Sess.

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125 S.463 / A.1071, 2025-26 Leg. Sess.

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132 Id. at 4.

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134 N.Y. Gen. Bus. Law §§ 349, 350.

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