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I N S E N A T E

May 13, 2010

Introduced by Sens. DILAN, C. JOHNSON -- read twice and ordered printed,
and when printed to be committed to the Committee on Insurance

AN ACT to amend the insurance law, in relation to the definition of
serious injury and determining the sufficiency of the evidence with
respect thereto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Subsection (d) of section 5102 of the insurance law, as
2 amended by chapter 955 of the laws of 1984, is amended to read as
3 follows:
4 (d) "Serious injury" means a personal injury which results in death;
5 dismemberment; significant disfigurement; a fracture; A PARTIAL OR
6 COMPLETE TEAR OR IMPINGEMENT OF A NERVE, TENDON, LIGAMENT, MUSCLE OR
7 CARTILAGE; INJURY TO ANY PART OF THE SPINAL COLUMN THAT RESULTS IN INJU-
8 RY TO AN INTERVERTEBRAL DISC; IMPINGEMENT OF THE SPINAL CORD, SPINAL
9 CANAL, NERVE, TENDON OR MUSCLE; loss of a fetus; permanent TOTAL OR
10 PARTIAL loss of use of a body organ, member, function or system; A
11 SURGICAL PROCEDURE TO ANY INJURED PART OF THE BODY; ANY OTHER permanent
12 consequential limitation of use of a body organ [or], member, FUNCTION
13 OR SYSTEM; ANY OTHER significant limitation of use of a body ORGAN,
14 MEMBER, function or system; or [a] ANY OTHER medically determined injury
15 or impairment of a PERMANENT OR non-permanent nature which prevents the
16 injured person from performing substantially all of the material acts
17 which constitute such person's usual and customary daily activities for
18 not less than ninety days during the one hundred eighty days immediately
19 following the occurrence of the injury or impairment. A FINDING OF SERI-
20 OUS INJURY UNDER ANY OF THE ABOVE ENUMERATED CATEGORIES IN THIS DEFI-
21 NITION SHALL BE A SUFFICIENT BASIS FOR AN AWARD FOR PAST AND/OR FUTURE
22 DAMAGES.
23 S 2. The insurance law is amended by adding a new section 5102-a to
24 read as follows:
25 S 5102-A. ISSUES OF FACT AND SUFFICIENCY OF THE EVIDENCE. WHETHER AN
26 INJURY QUALIFIES AS A SERIOUS INJURY PURSUANT TO SUBSECTION (D) OF
27 SECTION FIVE THOUSAND ONE HUNDRED TWO OF THIS ARTICLE SHALL BE A QUES-

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 TION OF FACT. WHERE EVIDENCE IS OFFERED AS TO (A) WHETHER AN INJURY
2 QUALIFIES AS A SERIOUS INJURY PURSUANT TO SUBSECTION (D) OF SECTION FIVE
3 THOUSAND ONE HUNDRED TWO OF THIS ARTICLE, OR (B) THE CAUSATION OF SUCH
4 AN INJURY, THE SUFFICIENCY OF SUCH EVIDENCE SHALL BE DETERMINED BY THE
5 TRIER OF FACT. SUFFICIENCY AND WEIGHT OF EVIDENCE OFFERED, INCLUDING BUT
6 NOT LIMITED TO THAT PERTAINING TO QUALITATIVE AND/OR QUANTITATIVE
7 ASSESSMENT OF INJURY, SHALL BE RESERVED FOR THE TRIER OF FACT.
8 S 3. This act shall take effect immediately and shall be applicable
9 to: (i) all actions and proceedings commenced on or after the effective
10 date of this act; and (ii) all actions and proceedings commenced prior
11 to the effective date of this act and pending on the effective date of
12 this act, where as of such date a trial of the issues thereon has not
13 yet commenced and a dispositive motion has not yet been filed.