Spinal-Cord Injury Claim: Preserved Claims, Coverage Layers, and Net Recovery

Prepared by counsel for the client's review

WHERE **New York; Queens County, Supreme Court**

- Counsel's stated countdown to notice deadline: Fourteen days from today
- Client age: 44
- TNC carrier liability limit (passenger aboard): $1.25 million
- Truck company carrier combined single limit: $1 million
- Confirmed primary liability coverage across two policies: $2.25 million
- Reported 311 complaint on dark signal, timing before crash: Roughly four hours before the crash (neighbor's account, unverified)
- Expected resolution horizon absent early carrier movement: Eighteen to twenty-four months

THE SHORT ANSWER

Answered with the calendar as it stands: the ninety-day window to the City and H+H closed September 12, 2026, so Friday, September 11 is no longer a live date, and the earliest open hard stop is September 12, 2027 for leave to serve late notice and for suit against the City and H+H (positions late_notice_leave_city, late_notice_leave_hh, negligence_action_city_signal, malpractice_action_hh). File that application promptly rather than waiting for the last day, and file the pre-action preservation application first because a sold or altered vehicle and recorder cannot be recovered. On the offer question, do not accept the conditional release and do not treat the oral offer as a tender: whether a driver-release condition counts as one is unresearched. A time-limited unconditional demand is worth sending only after excess, comp, the son's SUM limits and the lien facts are known, because the failure-to-settle claim belongs to the driver and TNC rather than the client (Pavia, 82 NY2d 445), and a release reduces the other defendants' exposure under General Obligations Law § 15-108. The blockers are: whether the auction already occurred and who holds title; whether the trip was in the course of employment and who the comp carrier is (workers_comp_notice_to_employer); the truck carrier's excess answer; the son's SUM limits (sum_notice_and_settlement_consent_son_policy); the radiologist's employer; and the prior firm's lien terms (prior_counsel_charging_lien).

WHERE EACH BUCKET STANDS

BUCKET 1 **Time-barred claims and perishable evidence preservation** NOTICE LAPSED — leave route, evidence fading

The ninety-day notice window to the City and Elmhurst closed September 12, 2026 with nothing served, so the claims now survive only by a court-granted late-notice route, while the vehicle and its recorder are the evidence closest to being lost.

BUCKET 2 **Immediate lockdown items versus deferrable claims** ONE CLOCK EXPIRED — rest ranked soonest-first

Lock down the vehicle and the late-notice application first; every other claim runs on a later, ranked clock, from September 12, 2027 out to June 14, 2029.

BUCKET 3 **Liens, Medicaid eligibility, and net recovery** UNFIXED CLAIMS — net turns on sequence

No-fault, a possible comp carrier, Medicaid and the prior firm's fee will all claim against one recovery, none is fixed in amount, and the client's net depends on order of payment and a Medicaid payback held to the medical share.

BUCKET 4 **Coverage layers, offer, and release or consent risk** $2,250,000 CONFIRMED — excess, SUM, release open

Confirmed liability coverage is $2,250,000 across the $1,250,000 TNC policy and the $1,000,000 truck policy, but excess, the son's UM/UIM limits and the oral conditional TNC offer are unresolved, and nothing should be signed.

WHAT TO DO, IN ORDER

01 **Identify the title holder and obtain a court order holding the vehicle and its recorder.** This leads because a sold or altered vehicle and recorder cannot be recovered, while the late-notice window stays open to September 12, 2027. First confirm whether the auction, stated as about ten days out with no date in the record, has already occurred; if the vehicle was sold, trace the buyer and custodian and seek an order directed at that non-party. Obtain the physical-damage claim number and title holder from the yard (VIN and stock number), the truck carrier's and TNC carrier's property-damage files, and ask the driver's counsel, if any, rather than the driver. Then file the pre-action order to show cause in Queens Supreme under CPLR 3102(c) naming the yard and the title holder, seeking a TRO against sale or alteration, an inspection protocol and a joint recorder download. Decode the VIN to identify the manufacturer, send it written notice and an invitation to the inspection, and retain an engineer and products co-counsel before the protocol is set, since the plan presupposes both and neither is yet engaged. Send written holds to the yard, title holder and manufacturer, and track signed receipts rather than treating the TNC adjuster letter as done.

02 **File the application for leave to serve late notice on the City and H+H now.** This is a duty, not an elective step: the ninety days ended September 12, 2026 with nothing served, so positions late_notice_leave_city and late_notice_leave_hh are open, with September 12, 2027 as the last day the court can grant leave under General Municipal Law § 50-e(5). Act now rather than near the last day, because the actual-knowledge, excuse and prejudice factors weaken with time. Reconcile your 'fourteen days from today' statement against the proof-of-service record to confirm nothing was ever served. Prepare the proposed notice to the § 50-e(2) content requirements and the § 50-e(3)(a) service method. Support the knowledge factor with the NYC 311 records and the DOT signal outage records, and bring in medical malpractice co-counsel now. The pre-action vehicle filing does not satisfy or toll these notice periods.

03 **Send the written holding letter to the TNC adjuster and sign nothing.** Send the letter now acknowledging the call, recording the phrase 'while I have authority', and asking for the offer in writing with every condition and for the policy, declarations, endorsements and any excess policy, while saying nothing about the driver or the release language. Do not accept: a release of the driver and TNC reduces the claim against the truck company, the City and the manufacturer under General Obligations Law § 15-108, and a settlement without comp consent can forfeit future compensation. Log the call and every response or silence as dated entries.

04 **Notify the comp carrier through the agency and get the agency's travel policy.** Notify the agency in writing so it reports to its carrier, whose identity is unknown, and obtain the agency's written travel and fare-reimbursement policy and the client's work status that day. The thirty-day employer notice period ended July 14, 2026, so rely on the Board's excuse grounds; the compensation claim's last day is June 14, 2028 (workers_comp_claim). Whether the trip was in the course of employment is for the Board, so treat comp primacy as undetermined and keep every release unsigned until it is answered.

05 **Give the son's carrier written notice and request the limits and the excess answers.** Give the son's UM/UIM carrier written notice, get the declarations page, SUM limits and consent-to-settle conditions, and document the household residence. Send written requests to the truck carrier and the TNC carrier for any excess or umbrella coverage, and ask each insurer's underwriting department for payment and cancellation history. Ask the driver's carrier for its disclaimer letter and test its timing under Insurance Law § 3420(d)(2).

06 **Write to the prior firm for its file and fee position, and review the retainer.** Request the file, including its representation letter and any deadlines, and the firm's fee position in writing. Review the July 2, 2026 retainer for charging-lien and consent-to-substitution terms, since a Judiciary Law § 475 lien is expected and this decides the fee exposure before any signature.

07 **Pull the malpractice proof and settle who employed the radiologist.** Request the complete Elmhurst and private hospital records, including the CT read report and MRI, pull the radiologist's credentialing and payroll, and retain a radiologist and spine surgeon on what the six days added. If the radiologist was affiliate-employed, the separate CPLR 214-a action runs to December 14, 2028 (malpractice_action_reading_radiologist_affiliate); either way a certificate of merit must accompany any complaint. Obtain the client's prior cervical history and the surgeon's prognosis.

08 **Sequence any time-limited unconditional demand after the coverage, comp and lien facts are known.** Once excess, the SUM limits and comp status are known, send a demand with a fixed deadline, a payment method, a release the carrier can sign that preserves the claims against the truck company, City and hospital, and every condition stated. Send it to the person with authority. This builds a record of a demand answered by a clean tender or a refusal, though the failure-to-settle claim belongs to the driver and TNC, not the client (Pavia, 82 NY2d 445). Research whether a driver-release condition counts as a tender. If a written offer of full limits arrives, give the son's carrier written notice, starting its thirty-day consent-or-advance period.

09 **Build the net-recovery structure before any funds are discussed.** Obtain the Medicaid plan's paid-claims ledger and the no-fault carrier's payments, document the medical share, and negotiate the Medicaid payback to that share. Stack the no-fault, comp, Medicaid and prior-firm claims against the fund and get any order-of-payment agreement signed by authorized parties. Direct the recovery into a trust meeting 42 U.S.C. § 1396p(d)(4)(A) plus a structured component priced by several insurers. In parallel, build the life-care plan and earnings record to a spinal-cord-level valuation.

DATES THAT MATTER

DATE	TIME LEFT	WHAT
Sep 12, 2027	311 days	Late notice leave city
Sep 12, 2027	311 days	Late notice leave hh
Sep 12, 2027	311 days	Negligence action city signal
Sep 12, 2027	311 days	Malpractice action hh
Jun 14, 2028	587 days	Workers comp claim
Dec 14, 2028	770 days	Malpractice action reading radiologist affiliate
Jun 14, 2029	952 days	Negligence action driver TNC truck
Jun 14, 2029	952 days	Product liability restraint manufacturer

WHAT WE STILL NEED

- Reconciliation of the actual current date with counsel's statement that the notice deadline is fourteen days away (implies about August 28, 2026), and confirmation whether any notice of claim has been served on City or H+H — Counsel, from the calendar and proof of service, to confirm the status of the notice deadline as of the AS OF date
- The trip was within the course of employment (agency travel and fare-reimbursement policy, work status at the time) — Agency written travel and reimbursement policy; workers' compensation determination
- Vehicle title holder or consignor and the physical-damage claim number — Salvage yard (stock number and VIN), the truck carrier's and TNC carrier's property-damage files
- Condition of the rear latch plate and whether the belt was latched at impact — Joint inspection by a retained engineer; metadata of the son's photograph
- Contents of the prior firm's file, including its representation letter and any deadlines — Prior general-practice firm, on written request
- Existence and integrity of the vehicle's event data recorder data — Joint non-destructive inspection and download under a court protocol
- Signal status at the intersection on June 14, 2026 and any prior City notice of the outage — DOT signal maintenance and outage records
- Employer of the reading radiologist (H+H or affiliate) — Elmhurst and affiliate credentialing and payroll records, or subpoena
- Identity of the truck driver and his employment relationship to the distributor or carrier — Police report and truck carrier
- Payment ledger by payer (no-fault carrier identity and amounts, Medicaid) — No-fault carrier and Medicaid managed-care plan
- Complete medical records from Elmhurst and the private hospital, including the MRI — Records requests to both hospitals
- Harm added by the six-day diagnostic delay (causation) — Radiology expert and spine surgeon retained by counsel
- Content of the CT read report (requested, not yet received) — Elmhurst records request or subpoena
- Current neurological prognosis and maximum medical improvement status — Treating spine surgeon

QUESTIONS FOR THE CLIENT

? Is the agency actually paying her on shift, did she file for comp, and was the travel between visits required by the agency?

? What will the papers rest on: the concrete risk showing, the protocol terms, and the respondents you will name?

? Have the 311 complaint and the latch plate evidence been verified, and do you have any record of the 311 log?

? What do the prior firm's retainer terms say on lien priority, fee and consent to substitution?

? Who holds title to the vehicle?

POINTS RAISED THAT THIS BRIEF DOES NOT YET ANSWER

- Delayed-diagnosis claim against hospitals
- Counsel lacks med mal and products experience

Citations and dates in this brief are confirmed by counsel before you rely on them.