



## Back Atcha' You Defense Pukes

Common in "soft tissue" car accident cases is a defense motion seeking summary judgment for the injured plaintiff's supposed failure to have injuries in excess of New York's No-Fault "serious injury" threshold. This motion, commonly known as a Licari motion – after the appellate case that heralded the motion's popularity – carries little or no downside to the defendant bringing it. If the motion is lost, the defense attorney gets a second chance at trial to renew the attack on plaintiff's injuries as being insufficient.

Many of these motions are ill-conceived or supported by insufficient evidence and are winnable, and are in fact won, by plaintiffs whose attorneys know the ins and outs of the current case law on this subject.

I propose that every defense Licari motion be countered by a plaintiff's cross-motion to dismiss the defense of "no serious injury." If the defense motion is soundly beaten, than the Court should consider removing the defense entirely, removing a potential hazard from plaintiff's path to a successful trial verdict. This would raise the stakes for defense law firms that routinely make and appeal denials of these motions and, just maybe, make them hesitant to bring them in almost all soft-tissue cases.

Commentary: For more about these motions and soft-tissue injuries, see my book, **WARNING! THINGS THAT CAN DESTROY YOUR N.Y. CAR ACCIDENT CASE** (And the Insurance Companies Already Know These Things), available for free from: [www.GreatLegalBooks.com](http://www.GreatLegalBooks.com).

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