

**5.33B      LIMITATION ON LAWSUIT OPTION <sup>1</sup> (3/10)**

**A.    Introduction**

In order to recover damages in this case, plaintiff must prove by a preponderance of the evidence that [he] [she] sustained injuries which fit into one or more of the following categories:

***NOTE TO JUDGE***

*Charge 1, 2, 3, 4, 5, 6 or any combination of them, depending on the proofs in each case.*

In cases with two or more defendants, some of whom have available the Limitation on Lawsuit Option defense and others who do not, charge the following:

The jury should answer two specific interrogatories as to each defendant: (1) was this defendant negligent; (2) if so, did the negligence proximately cause plaintiff's injuries? If more than one defendant was negligent and their negligence proximately caused plaintiff's injuries, the jury has to find what percentage of the total negligence or fault is attributable to each defendant. Once the jury answers those questions, it should then determine whether or not plaintiff satisfied the applicable threshold which applies to a defendant. Then the jury should affix damages. *Bolz v. Bolz*, 400 N.J. Super. 154 (App. Div. 2008).

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<sup>1</sup> See N.J.S.A. 39:6A-8a. Though not numbered in the statute, the Limitation on Lawsuit Option within the *Automobile Insurance Cost Reduction Act* (AICRA) of 1998 (L.1998, c. 21 and c. 22) ("AICRA"), the categories are: (1) death; (2) dismemberment; (3) significant disfigurement or significant scarring; (4) displaced fractures; (5) loss of a fetus; (6) a permanent injury within a reasonable degree of medical probability, other than scarring or disfigurement. The effective date of this provision of AICRA is March 22, 1999. Therefore, the Limitation on Lawsuit Option shall apply to individuals who, at the time of the accident, were insured under automobile liability insurance policies issued after March 22, 1999. By way of example, if an individual was involved in a motor vehicle collision on March 23, 1999, but was still covered under a policy issued before the effective date of the statute (March 22, 1999), he or she will be subject to the verbal threshold charge applicable to L.1988, c.119 effective January 1, 1989.

1. Death;
2. Dismemberment;
3. Significant disfigurement or significant scarring;
4. Displaced fracture;
5. Loss of a fetus;
6. A permanent injury within a reasonable degree of medical probability, other than scarring or disfigurement.

If you find the injuries caused by the accident do not come within one of these categories, your verdict must be for the defendant. If you find the injuries caused by the accident do come within one of these categories, your verdict must be for the plaintiff.

**B. Significant Disfigurement or Significant Scarring (Type 3)**  
(Revised 6/07)

In this case, the plaintiff alleges and has the burden to prove that [*he*] [*she*] suffered a significant disfigurement or significant scarring as a result of the motor vehicle accident. An injury shall be considered a significant disfigurement or significant scarring if a reasonable person would find that the disfigurement or scarring renders plaintiff's appearance unattractive, objectionable, or as the subject of pity or scorn, or that such condition individually or collectively substantially detracts from plaintiff's appearance or impairs or injures the beauty, symmetry, or

appearance of the plaintiff so as to render the bearer unsightly, misshapen or imperfect deforming [*him*] [*her*] in some manner. You shall consider as factors in making this determination the appearance, coloration, existence, size and shape of plaintiff's disfigurement or scar[s] along with the characteristics of surrounding skin and the remnants of the healing process and other cosmetically important matters.

**C. Permanent Injury (Type 6)**

In this case, the plaintiff alleges that [*he*] [*she*] suffered a permanent injury as a result of the motor vehicle accident. An injury shall be considered permanent when the body part or organ, or both, has not healed to function normally and will not heal to function normally with further medical treatment.<sup>2</sup>

Plaintiff must prove this claim through objective, credible medical evidence. Objective proof means the injury must be verified by physical examination or medical testing and cannot be based solely upon the plaintiff's subjective complaints. Credible evidence is evidence you find to be believable.

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<sup>2</sup> This definition of "permanent injury" is taken directly from the AICRA of 1998, *N.J.S.A.* 39:6A-8. In *DiProspero v. Penn*, 183 *N.J.* 477 (2005), the New Jersey Supreme Court held that the Legislature did not intend to require a plaintiff with a Type 6 injury to prove a "serious or substantial impact" on his or her life in order to pierce the verbal threshold. Therefore, a plaintiff need only prove a permanent injury, as defined in the statute, to recover for non-economic damages.