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New York's Comprehensive Insurance Disclosure Act and Recent Amendments Establish New Insurance Disclosure Obligations for Defendants

In December 2021, the New York legislature passed the Comprehensive Insurance Disclosure Act (the "Act"), which required defendants in civil litigations in New York State courts to disclose certain information relating to their insurance coverage, including copies of applicable insurance policies, contact information for insurance adjusters, amounts available under the policies to satisfy the judgment, information related to lawsuits or claims that have eroded coverage, and copies of insurance applications. The Act was criticized for imposing onerous new requirements on defendants, and in response to those criticisms, the Act was amended on February 24, 2022,[1] eliminating many of the more burdensome obligations in the original version of the law. However, even as amended, the Act, which is now in effect, will impose significant disclosure obligations of which defendants in New York should be aware.

I. Background

The Act, which was signed into law on December 31, 2021 and became effective immediately, modified C.P.L.R. 3101(f) to require that any defendant in New York state courts provide insurance information to other parties in the action shortly after filing an answer. Prior to the Act's passage, C.P.L.R. 3101(f) *permitted* parties to seek insurance information during discovery, but following the Act's passage, defendants are now *required* to disclose this information.

Under the original Act, defendants were required, within 60 days of serving an answer, to provide plaintiffs with complete information regarding any insurance agreement through which a judgment could be partially or fully satisfied. This requirement applied not only to lawsuits filed after the Act went into effect but also retroactively to all pending lawsuits. To satisfy these requirements, defendants had to disclose (i) complete copies of policies, including the application(s) for the policies; (ii) the telephone numbers and email addresses of adjuster(s); (iii) the amounts available to satisfy a judgment under the policies; (iv) any pending or adjudicated lawsuit(s) that have reduced or eroded the limits of any available insurance; and (v) the amount of any payment of attorneys' fees that have reduced available insurance limits.

Attorneys and industry groups criticized the Act as unnecessary, noting that parties already routinely requested similar insurance information and were required to exchange it under the existing discovery rules, and the

[1] https://legislation.nysenate.gov/pdf/bills/2021/s7882a.

Act therefore essentially makes mandatory and more burdensome disclosures that were already regularly requested and voluntarily produced. Commentators also argued that the Act, at least as originally passed, was more burdensome than comparable insurance disclosure laws in other jurisdictions and criticized it for applying retroactively to pending litigations. Meanwhile, supporters of the Act claim that it is necessary to standardize the process and crack down on attempts by parties to resist disclosing insurance coverage.[2] When signing the Act in December, Governor Hochul commented that the legislature should amend the Act to reduce its burden.[3]

In late February, the legislature did so. Under the amendments, defendants no longer need to disclose: (i) insurance applications; (ii) the telephone number of adjusters; (iii) lawsuits that have eroded the limits of available insurance; and (iv) the amount of payments of attorneys' fees. The amendments also extend the deadline for defendants to disclose insurance information after filing an answer from 60 days to 90 days and limit these new disclosure requirements to lawsuits filed after the passage of the Act, no longer applying the obligations retroactively.

Notably, the amendments *broaden* disclosure requirements in at least one way, by requiring the disclosure of *all* insurance policies related to the claim being litigated, rather than only those "sold or delivered within the state of New York," as the original Act required.

II. Disclosure Requirements

Under the Act and its amendments, defendants (including third-party defendants, counter-claim defendants, and cross-claim defendants) must disclose the following information to all parties within 90 days of filing an answer in any civil actions filed in New York state court on or after December 31, 2021:

- Copies of all applicable primary, excess, and umbrella policies that may be liable to satisfy part or all of a judgment, or, with the written consent of plaintiff, declaration pages of the policies in lieu of the entire policy;
- The name and email address of the person responsible for adjusting the claim at issue; and
- The amount of potentially available coverage after the erosion of policy limits from other claims.[4]

Once the above information is produced, defendants must take "reasonable efforts" to ensure the information remains accurate and complete. Defendants must provide updated information (i) at the time of filing of the note of issue, (ii) when entering into any formal settlement negotiations conducted or supervised by the court, (iii) at a voluntary mediation, and (iv) when the case is called for trial. The ongoing obligation to provide updates as needed continues during the pendency of the litigation and for 60 days after any settlement or entry of final judgment, inclusive of all appeals.

Disclosures must be accompanied by two forms of certification—an affidavit from the defendant and an affirmation from the defendant's attorney. The Act additionally provides that disclosure of this information does not constitute an admission that the alleged injury or damage is covered by the insurance policy or policies and further provides that information so disclosed is not, by reason of its disclosure, admissible as evidence at trial. Because the Act modified only the C.P.L.R., it will only apply to defendants in civil cases in New York state courts.

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[2] Ben Zigterman, "NY Lawmakers Amending Defendant Insurance Disclosure Bill," *Law360* (Feb. 2, 2022), https://www.law360.com/insurance-authority/articles/1461269.

[3] N.Y. Governor's Approval Mem. on Senate Bill No. 7052, No. 169 Ch. 832 (Dec. 31, 2021) https://static.cahill.com/docs/Fn3%20-%20Governors%20Approval%20Memo.pdf.

[4] C.P.L.R. 3101(f)(1)(i)-(iv).

III. Open Questions

The Act imposes significant new discovery obligations on defendants in New York state courts and their insurance companies. Even after the amendments, ambiguities and questions remain, some of which will likely need to be addressed by the courts. These open questions include:

- The Act does not state what penalties or other consequences apply if a defendant fails to comply, either by failing to produce the required insurance information or by producing false information, even if done mistakenly.
- The Act requires disclosure of any policies that "may be liable to satisfy part or all of a judgment that may be entered." It is not clear how broadly or strictly courts will read the term "may," and whether this will require defendants to disclose every insurance policy available to them, or only those that are reasonably at risk.
- The Act requires that defendants disclose the depletion or erosion of policy limits. Compliance with this requirement may suggest to plaintiffs the existence of confidential regulatory or other investigations or proceedings or confidential settlements, if these matters have reduced the policy amount.
- It is yet to be seen how willing plaintiffs will be to agree to accept declarations in lieu of complete copies of insurance policies, especially given that plaintiffs can unilaterally revoke such agreements and request complete copies at any time under the Act.

IV. Conclusion

Despite the February 2022 amendments to the Act, it still imposes significant new requirements that must be managed by defendants and defense counsel. In the coming months and years, the full contours of the Act's obligations likely will become clearer, as plaintiffs, defendants, and courts determine how to comply.

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If you have any questions about the issues addressed in this memorandum or if you would like a copy of any of the materials mentioned, please do not hesitate to call or email authors Joel Kurtzberg (partner) at 212.701.3120 or jkurtzberg@cahill.com; or Cyrus Bordbar (associate) at 212.701.3391 or cbordbar@cahill.com; or email publications@cahill.com.