



Alerts

New York Imposes Sweeping New Insurance Disclosure Requirements on Defense Counsel and Insurers

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Insights for Insurers

On December 31, 2021, New York Governor Kathy Hochul signed the [Comprehensive Insurance Disclosure Act](#) (the Act). The Act amends CPLR 3101(f) and was ostensibly implemented to combat "delaying tactics" by defense counsel and compel the disclosure of primary, excess, and umbrella policies related to a claim or lawsuit. The sweeping changes engineered by the Act have significant implications for both defense counsel and insurance companies.

As currently written, the Act will require the following disclosures by March 1, 2022, for all pending legal actions and within 60 days of a defendant's answer in future litigation.

General Obligations Under the Act:

- Defendants have an affirmative duty to provide a complete response and have an ongoing obligation to ensure that the information contained in its disclosure remains accurate.
- Updates are required within 30 days after a party or its attorney receives information that renders the prior disclosure inaccurate or incomplete.
- This obligation continues during the entire litigation and for 60 days after settlement or entry of a final judgment.

Insurance Policies Disclosure:

- Defendants must disclose a complete copy of all primary, excess, and umbrella policies, including declarations, insuring agreements, conditions, exclusions, endorsements, and the application for insurance.

Erosion of Policy Limits:

- Defendants must provide the caption, date of filing, and identity and contact information of counsel for any other lawsuit that has reduced or may erode the policy limits.
- Defendants are required to disclose the amount of attorneys' fees that have reduced or eroded the limits of the policy, along with the name and address

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of any attorney who received fees.

Claims Handling Information:

- Defendants must identify and provide contact information for all persons responsible for adjusting the claim, including TPAs and those at the insurance company to whom the TPA reports.

Certification of Response:

- Both the defendant and its attorney are required to certify the response pursuant to the newly enacted CPLR 3122-B.

Recognizing that the Act is overly burdensome and could potentially reveal confidential information that would unfairly prejudice defendants and their carriers, Governor Kathy Hochul "red-lined" certain portions of the Act. The Governor also issued an Approval Memorandum that stated she had reached an "agreement with the Legislature to ensure that the scope of insurance coverage information that parties must provide is properly tailored for the intended purpose..." Our understanding of the details of that agreement and Governor Hochul's proposed amendments are as follows:

- Disclosure must take place within 90 days, not 60.
- Proof of insurance can include a copy of the policy or, upon agreement of all parties in writing, the policy declaration page.
- Only policies that "relate" to the claim litigated must be disclosed.
- Only the name and email address of the claims adjuster must be disclosed.
- Defendants and their carriers would only be required to provide the "total limits available" under the policy and would not need to disclose details concerning cases that have reduced or may erode the policy limits.
- Policy applications no longer need to be disclosed.
- Defendants "must" make reasonable efforts to update and provide corrected information concerning the policies at issue throughout the litigation.
- Disclosure would not constitute an admission that the claim is covered.
- The Act would only apply to all actions moving forward, and its retroactive provision would be deleted.

Conclusion

While we wait for the legislature to take up Governor Hochul's proposed amendments, the Act, as passed and signed into law, is in full force and effect. As such, carriers and their defense counsel must be prepared to provide disclosures pursuant to the Act or seek a protective order from the appropriate court. Please contact your Hinshaw attorney to ensure you are ready to comply with these new onerous requirements.

Related Content

- [Amendments Proposed to New York's Comprehensive Insurance Disclosure Act, January 21, 2022](#)