

New York Statute Changes Requirements for Insurance Information Disclosure

January 11, 2022

Stephanie M. Brochert
(248) 594-4256
sbrochert@plunkettcooney.com

Signed into law by Gov. Kathy Hochul on Dec. 31, New York's Comprehensive Insurance Disclosure Act (CIDA) imposes significant new requirements for defendants in civil cases filed in New York courts, their defense counsel, and insurers with respect to discovery of insurance policy information.

CIDA changes the language in CPLR § 3101(f), which previously allowed a party to request and obtain "the existence and contents of any insurance agreement ... [which] may be liable to satisfy part or all of a judgment." Now, as a result of CIDA's enactment, defendants are required to affirmatively provide specifically delineated information relating to insurance without waiting for a request. The law went into effect immediately upon enactment. Here are the most important items for carriers to note:

- For cases filed on or after Jan. 1, 2022, the "information and documents" encompassed in the statute (discussed below) must be produced within 60 days after the party serves its answer.
- For cases pending as of Dec. 31, 2021, the information and documents must be produced within 60 days of the statute's effective date (by March 1, 2022) to the extent they have not already been produced in that case.
 - *Note: even if some information covered by the statute has already been produced in the case—such as the policy itself—the statute requires disclosure of "any information required by this act that has not previously been provided" by March 1, 2022. Thus, litigants and their insurers should be prepared to disclose all additional information and documents listed in the statute by that deadline.*
- The "information and documents" include:
 - A list of all primary, excess and umbrella policies "sold or delivered within the state of New York," "under which any person or entity may be liable to satisfy part or all of a judgment that may be entered in the action or to indemnify or reimburse for payments made to satisfy the entry of final judgment."

NEW YORK STATUTE CHANGES REQUIREMENTS FOR INSURANCE INFORMATION DISCLOSURE Cont.

- Copies of “all applicable” policies, including umbrella and excess policies
- Contact information (including the phone number and email address) for any person “responsible for adjusting the claim,” including third-party administrators and insurance carrier employees “to whom the third-party administrator is required to report”
 - *Note: because the disclosure obligation is continuous (see below) and the party must update any information within 30 days of receiving notice of a change, in the absence of additional guidance, this likely means that the disclosure must be updated every time the claim is assigned to a new adjuster.*
- A list of the “amounts available” under each policy to satisfy a judgment or reimburse for payments made to satisfy a judgment
- A list of any lawsuits that have reduced or eroded **or may reduce or erode** the limits of each applicable policy, which list must include:
 - the lawsuit caption,
 - the date the lawsuit was filed,
 - contact information of all attorneys for all represented parties, and
 - the amount of attorney’s fees that have eroded the policy, along with the name and address of any attorney who received such fees under the policy.
- Copies of applications for insurance corresponding to each applicable policy.
 - *Note: the statute does not provide guidance with respect to Personally Identifiable Information (PII) likely contained in policy applications. As a best practice, insurers and counsel should continue to redact PII in accordance with their normal procedure until additional guidance is issued.*
- The obligation applies to all defendants, third-party defendants and defendants in a cross-claim or counterclaim.
- The obligation to disclose is ongoing, and the statute requires that any updated information must be produced within 30 days of receipt by the party or its counsel.
- The obligation to disclose extends for 60 days after settlement or entry of final judgment and continues through appeal.

Also of note, the disclosure(s) must be accompanied by a sworn affidavit or affirmation from **both** the disclosing party **and** its attorney stating that:

“the information [disclosed] is accurate and complete, and that reasonable efforts have been undertaken, and in accordance with [CPLR 3101(f)(2)] will be undertaken, to ensure that this information remains accurate and complete.”

NEW YORK STATUTE CHANGES REQUIREMENTS FOR INSURANCE INFORMATION DISCLOSURE Cont.

- *Note: though the statute is unclear on this point, as a best practice, these affidavits and affirmations should be included with each subsequent disclosure of updated information.*

While the law does not explicitly impose any sanctions on parties for failure to timely or properly disclose the applicable information and/or documents, because it now forms part of CPLR § 3101, defendants and their counsel who fail to make the appropriate disclosures may be subject to sanctions set forth in CPLR §3124 and/or §3126.

There are reports that an amended version of this law may be introduced in the New York Legislature that may adjust and relax some of the requirements of the CIDA; however, insureds and their insurers are encouraged to be prepared to comply with the requirements of CIDA on or before March 31.

Plunkett Cooney's Insurance Coverage Practice Group will continue to update pertinent developments, and is available to address any questions relating to the CIDA. For more information about Plunkett Cooney's Insurance Coverage Practice Group, please visit the firm's website.