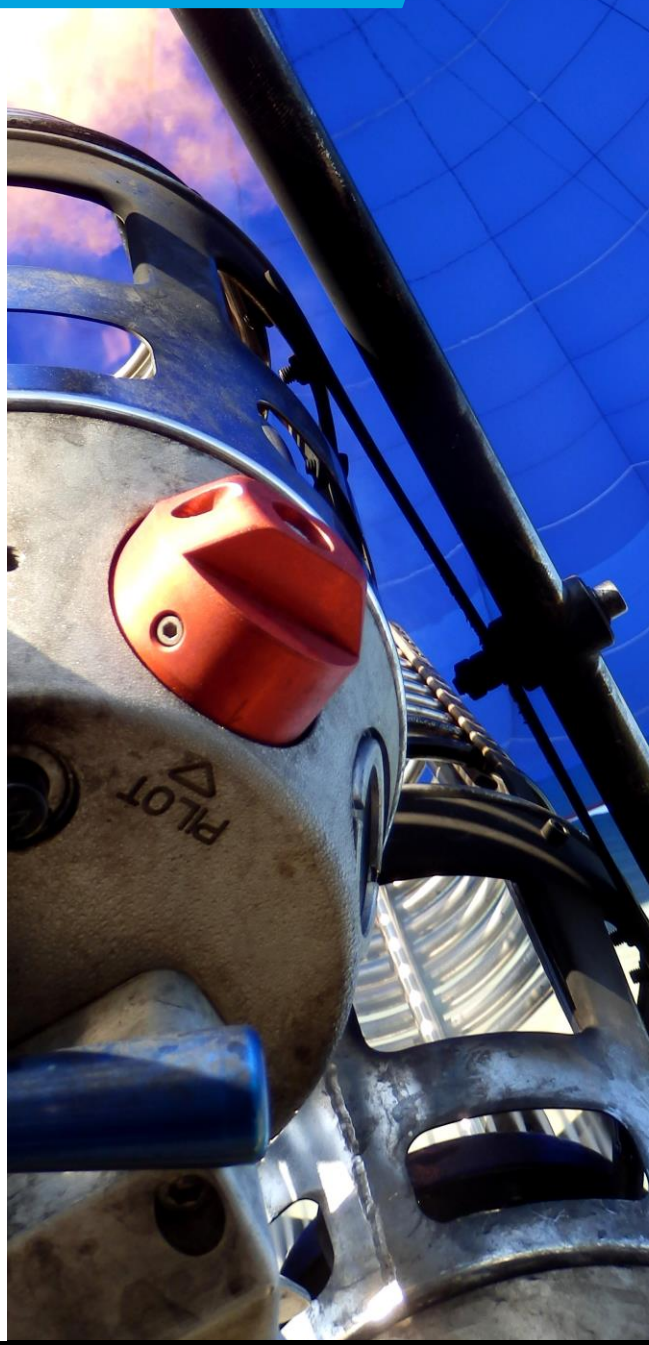
Key Amendments to New York's Comprehensive Insurance Disclosure Act

February 2022



New York's Comprehensive Insurance Disclosure Act (the "Act") has been amended, limiting the scope of insurance information that defendants must provide in a litigation. Proposed amendments to New York's Comprehensive Insurance Disclosure Act (the "Act") were passed by the New York Senate and Assembly on January 26, 2022 and February 17, 2022, respectively. The bill was delivered to New York Gov. Kathy Hochul on February 24, 2022 and signed into law on February 25, 2022. The newly amended Act should come as welcome news to defense counsel, insureds, and insurers as it provides additional time to complete insurance disclosures, no longer applies retroactively, and limits the information required in the disclosures. The purpose of this memo is to provide an analysis of the Act following the enactment of the amendments.

In its original form, the Act, which modifies C.P.L.R. § 3103(f), required that a defendant provide a claimant with the following information within 60 days of filing its Answer to a lawsuit:

- A complete copy of any insurance policy, whether primary or excess, under which any person or entity may be liable to satisfy all or part of a final judgment that may be entered.
- The contact information, including telephone numbers and email addresses of adjusters, including third-party administrators.
- The amounts available to satisfy a judgment under the policy/policies.
- Information pertaining to any lawsuits that have reduced the amounts available under the policy/policies, including the caption of the lawsuit, the date the lawsuit was filed, and the identity and contact

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information of the attorneys for all represented parties there.
- The amount of any payment of attorneys' fees that have eroded the amounts available under the policy/policies, along with the name and addressees of any attorney who received such payments.
- The application(s) of insurance.

Soon after its enactment, the Governor proposed revisions to the Act which were signed into law on February 25, 2022. These amendments ease the requirements imposed by the Act. Defense counsel's obligation to certify the required disclosures is unchanged under the newly created § 3122-b of the CPLR, but counsel will no longer be required to determine if disclosure obligations have been met in all pending cases as the Act no longer applies retroactively.

Following enactment of the amendments, the Act has been modified as follows:

- Lengthening the time to disclose insurance information from 60 days to 90 days;
- Permitting production of the declaration pages only, if the plaintiff consents; however, a plaintiff may withdraw this consent at any time.
- Adding the phrase "insofar as such documents relate to the claim being litigated" but eliminating language confining the Act's applicability to policies and programs "sold or delivered within New York;"
- Requiring disclosure of only the name and email address of the assigned claims adjustor;
- Eliminating the required disclosure of any lawsuits and attorneys' fee amounts that may have eroded or reduced the policy;
- Requiring defendants to disclose any updated insurance information, including when "filing of the note of issue," at the commencement of court-ordered settlement negotiations, at voluntary mediation, at trial, and for 60 days after entry of final judgment or settlement after all appeals;
- Exempting personal injury protection cases from these disclosure requirements;
- Eliminating the language requiring that policy applications be disclosed;
- The Act no longer applies retroactively and only applies to suits filed after December 31, 2021; and
- Adding language stating that the disclosure of policy limits will not constitute an admission of coverage under the subject policy.

Insureds and insurers will still need to assist defense counsel and furnish certain information that must be included in the required disclosures, but the amended Act makes this easier. Declarations pages, with the plaintiff's consent, may now satisfy the disclosure requirement and insureds will no longer be required to provide their insurance applications or information concerning other lawsuits or settlements which may have eroded or reduced the policy limits. In addition, the time period for providing these disclosures has been lengthened.

Significantly, the newly added language to the Act stating that "[d]isclosure of policy limits … shall not constitute an admission that an alleged injury or damage is covered," provides an opportunity to assert a reservation of rights of sorts in these required disclosures. Insurers should take note of this newly added language and include it on future certifications along with language making clear that the insurer does not waive any available coverage defenses.

The elimination of the "sold or delivered within the state of New York" language in Section (f)(1)(i) of the Act in favor of language requiring the disclosure of programs and policies that "relate to the claim being litigated" arguably both broadens and narrows the scope of the Act. While the Act's reach now extends beyond policies issued in New York, it no longer automatically applies to all policies issued in New York. Rather, only those policies related to the claim in the litigation must be disclosed. Although this language has yet to be interpreted in the context of the Act, courts in New York have interpreted the language "related to" broadly as having a connection to. [1] While the phrase has been afforded broad interpretation, the "related to" requirement will allow defendants (e.g. a corporate defendant holding, in addition to CGL policies, employer liability policies and director and officer liability policies that was sued for personal injuries or a defendant with multiple excess policies where the exposure in the lawsuit is well within the limits of the primary policy) to argue that certain policies issued to it are not relevant to the applicable legal dispute and need not be disclosed.

[1] *Dalton v. Peninsula Hosp. Ctr.*, 626 N.Y.S.2d 362, 365 (Sup. Ct. 1995); see also *Hansard v. Fed. Ins. Co.*, 46 N.Y.S.3d 163, 167 (2017).

Despite these amendments, insurers should continue to be prepared to:

1. Identify all policies that were issued to the defendant-insured and effective at the time of the alleged incident or occurrence and are related to the litigation.

2. Obtain loss runs for the policies at issue/identify the available limits of insurance and whether they have been eroded and to what extent;

3. Provide insureds with the name and email address of an adjuster assigned to handle the suit.

Further information

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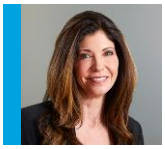
Key contacts



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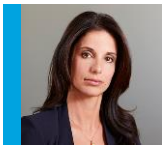

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