

CLIENT ALERT

## New Insurance Disclosure Requirements For New York State Court Litigants

JANUARY 31, 2022

On December 31, 2021, New York Governor Kathy Hochul signed into law the Comprehensive Insurance Disclosure Act (the “Act”),<sup>[1]</sup> amending the scope of disclosure requirements for insurance agreements in CPLR § 3101(f). The changes subject New York state court defendants to some of the most extensive liability insurance disclosure requirements in the nation.

Until now, CPLR § 3101(f) provided only that “[a] party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may entered in the action[.]” This was narrowly interpreted to only require the production of insurance policies issued by traditional insurance companies that would actually be triggered by a judgment in the action. Under the former provision, disclosure was only required in response to a demand or a court order governing discovery.

The amended CPLR § 3101(f) requires defendants to automatically disclose insurance policies along with other records related to insurance coverage, including applications for insurance policies and information concerning other claims. Defendants must produce this information to all parties in the action within 60 days of answering the complaint, or, in pending cases in which an answer has already been filed, by March 1, 2022.

The new automatic disclosure requirement applies to, among other things:

- Complete copies of all primary, excess, and umbrella policies that may be liable to satisfy part of all of a judgment, including any issued by captive insurance entities, risk retention groups, reciprocal insurance exchanges, and syndicates;
- The policy limits (or residual limits if applicable);
- Applications for such policies;
- The contact information (including phone number and email address) of insurance representatives/adjusters and third-party administrator representatives;
- Any lawsuits that have reduced/eroded, or that may reduce/erode the limits, including the caption, date of filing, and identity/contact information of the parties; and

- The amount of any payment of attorneys' fees that has eroded policy limits and the contact information of any attorney who received such payments.

The Act also adds new CPLR § 3122-b, which requires the defendant (i.e., the party) and counsel to certify the information provided pursuant to 3101(f) is accurate and complete, and that reasonable efforts to ensure accuracy and completeness have been and will be taken on an ongoing basis. As under the previous version of § 3101(f), disclosures under the rule are not automatically admissible in evidence at trial.

Defendants in New York courts need to devise a strategy for either disclosure of insurance information under the revised rule or contesting whether it is material or necessary for the prosecution of the action. Prior to any disclosure, defendants should assess whether it reveals potentially sensitive information, including privileged claim-related information or confidential business information. Such disclosures could also pose business issues between defendants and their insurers. With that said, defendants and potential defendants are encouraged to scrutinize the new law with counsel.

## Key Takeaways from the newly amended CPLR § 3101(f):

- Defendants in New York state court must produce extensive insurance-related information within 60 days of answering the complaint (or, if an answer has already been filed, by March 1, 2022).
- Prior to disclosure, the relevant insurance materials should be reviewed carefully for privileged and confidential information, and protective measures should be put in place, as well as considering whether to seek an order protecting materials from automatic disclosure.

If you have additional questions or need further assistance, please reach out to the authors of this article, **Jeffrey Amato** (Partner, Antitrust/Competition and Complex Commercial Litigation) and **Martin Geagan** (Partner, Antitrust/Competition and Complex Commercial Litigation).

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▮ A full text of the bill can be read [here](#).

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