Two Months After Its Passage, New York Dials Back Comprehensive Insurance Disclosure Act

Amendment Reduces the Most Far-Reaching Obligations on New York State Court Parties to Make and Update Expansive Insurance-Related Disclosures

SUMMARY

News reports indicate that on February 24, 2022, New York Governor Kathy Hochul signed into law an amendment (the “Amendment”) to the Comprehensive Insurance Disclosure Act (the “Act”). The Act, which was signed into law on December 31, 2021, imposed a requirement for defendants in New York civil lawsuits to produce wide-ranging insurance disclosures within 60 days of serving an Answer, as well as to update those disclosures continuously until 60 days after the conclusion of litigation. The Act required parties and their counsel to certify compliance with each disclosure and amendment, and mandated pending cases to come into full compliance by March 1, 2022. Our prior posting on the Act is available here.

The Act immediately drew criticism from some commentators because of its breadth and burdens, which substantially exceeded those of other jurisdictions. As noted in our prior client alert, on the day Governor Hochul signed the Act into law, she commented that the New York Legislature should amend the Act to reduce some of its more onerous requirements.

Under the Amendment, the Act now applies only to cases filed after December 31, 2021, and does not apply retroactively to earlier pending cases. The Amendment also eases some of the Act’s more onerous requirements:

- It extends the initial insurance disclosure deadline to 90 days after service of an answer (instead of 60 days).
It permits defendants to produce the declarations pages in lieu of the full policy for any insurance that may provide coverage for a judgment in the action, but only if the other side agrees in writing. The declarations pages are typically more readily available, and include the name of the policyholder, the type of insurance provided, the policy period, and the amount of policy limits, sublimits, deductibles, or self-insured retentions.

It eliminates the Act’s previous requirement to produce all applications for insurance, which often contain confidential information of no relevance to the litigation.

It removes the Act’s prior obligation to provide (i) information regarding all lawsuits that have eroded or may erode policy limits and (ii) information regarding the amount of attorneys’ fees that have eroded policy limits, and contact information for the attorneys involved. This should mitigate the concern we previously noted about whether defendants need to disclose confidential governmental investigations or confidential settlements that have eroded or may erode policy limits. The Amendment still requires disclosure of the total limits available, “which shall mean the actual funds, after taking into account erosion and other offsets that can be used to satisfy a judgment.” Thus, defendants still must work with their insurers and counsel to calculate total erosion in order to satisfy the Amendment’s disclosure requirements, which is particularly complex for companies facing parallel litigation and investigations in multiple jurisdictions or that have multiple potentially applicable insurance programs.

It requires parties to identify “an assigned individual responsible for adjusting the claim at issue” instead of the broader “any person or persons responsible for adjusting the claim,” and requires parties to provide that person’s name and email address, rather than their name and telephone number.

The Amendment also lessens parties’ ongoing duties to supplement their disclosures. Rather than the Act’s original obligation to provide updated disclosures within 30 days of any change, the Amendment requires updates only at specific points in the litigation: “the filing of the note of issue, when entering into any formal settlement negotiations conducted or supervised by the court, at a voluntary mediation, and when the case is called for trial.”

Some ambiguity, however, remains. For example, the Amendment retains a general obligation to “make reasonable efforts to ensure that the information remains accurate and complete,” including “for sixty days after any settlement or entry of final judgment in the case, inclusive of all appeals.” The events triggering disclosure, however, all should occur prior to a “settlement or entry of final judgment.”

The Amendment also clarifies that disclosure of insurance information does “not constitute an admission that an alleged injury or damage is covered by the policy.” Particularly in the directors and officers liability insurance context, multiple insurance programs might be implicated by the same claim, and under the Amendment, defendants may be required to turn over insurance-related information before coverage questions are fully resolved. This clarification confirms that litigants can satisfy their disclosure obligations without them, or their insurers, needing to take definitive positions on coverage questions.
Finally, the bill does not remove the requirement for dual certifications of compliance in affirmation or affidavit form by the defendant parties and their counsel.

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ENDNOTES

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February 26, 2022
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