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New York's Comprehensive Insurance Disclosure Act Imposes Increased Disclosure Requirements On Defendants at the Beginning of Lawsuits

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On December 31, 2021, New York Governor Kathy Hochul signed into law the Comprehensive Insurance Disclosure Act, which amends Section 3101(f) of the Civil Practice Law & Rules (CPLR) to require the automatic disclosure of insurance-related items within sixty days of the filing of an answer in a civil suit. For lawsuits pending as of the effective date of the Act, the disclosures required by Section 3101(f) must be provided by March 1, 2022.

Pursuant to amended Section 3101(f), defendants (including third-party defendants, cross-claim defendants, and counterclaim defendants) must provide the following information to plaintiffs within sixty days of answering the affirmative pleading, accompanied with a certification from both the defendant and his/her/their/its defense counsel that the disclosures are accurate and complete:

- Copies of all insurance policies that may be liable to satisfy a judgment in the lawsuit, including the insurance application.
- The contact information of any individuals responsible for adjusting the claim on each policy, including his/her/their phone number and email address. If a TPA is involved, his/her/their contact information must also be disclosed.
- The amounts available to satisfy a judgment under each disclosed policy.
- Any lawsuits that have reduced or erode, or which could reduce or erode, the limits of insurance policies. For each lawsuit, defendants must provide the captions of the lawsuit, the date lawsuit was filed, and attorney contact information for all represented parties in that lawsuit.
- The amount of any attorneys' fees that have reduced or eroded the policies, including the name and address of any attorney who received those payments.

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Amended Section 3101(f) of the CPLR places the burden of providing initial and supplemental insurance information on defendants and their attorneys. Amended Section 3101(f) requires that defendants make “reasonable efforts” to ensure that the disclosures remain accurate and complete. When a defendant receives information during litigation that deviates from the initial sixty-day disclosure, the defendant has thirty days to provide updated disclosures to the plaintiff. The defendant’s obligation to supplement its disclosures continues through sixty days after settlement. Traub Lieberman’s defense attorneys are in the process of working with both carriers and defendants to obtain all pertinent information and make the required disclosures on all pending lawsuits subject to the statute, while protecting privileged and proprietary information.

As a consequence of defendants’ new disclosure requirement, insurance companies will likely see an increase in communications from defense counsel seeking information that must be disclosed. Traub Lieberman’s insurance coverage team is available to answer any questions you may have in response to a request from defense counsel under the new statute, including but not limited to issues relating to policy erosion by defense costs or other claims, multiple claims under the same policy, proprietary information contained in insurance applications, and how to communicate coverage defenses through the disclosures.