

New York Unwinds Some Burdensome Insurance Disclosure Obligations Imposed on Defendants by Amending the Comprehensive Insurance Disclosure Act

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Policyholders can breathe more easily now that New York has relaxed or eliminated some of the more onerous insurance disclosure obligations of its recently enacted Comprehensive Insurance Disclosure Act (the Act).¹ As discussed in greater detail in our [alert](#) dated 8 February 2022, the Act added a series of rules effective 31 December 2021 mandating that defendants in litigation produce extensive insurance documentation and information. On 28 February 2022, Governor Kathy Hochul signed into law welcome amendments following significant pushback against certain provisions of the Act.

Of particular importance, the revised Act eliminates its former retroactive application and extends the time limit to comply. More specifically, the Act now only applies to cases filed on or after 31 December 2021 and gives policyholders 90 instead of 60 days to comply. Thus, the earliest a litigant would have to comply is 31 March 2022, and the Act's new discovery obligations do not apply to litigants in actions filed prior to 31 December 2021. Under the original version of the Act, all defendants were to complete the new disclosures on or before 1 March 2022. The timely erasure of this deadline relieves understandable consternation for defendants whose cases began prior to the Act's effective date. While the amendments lessen the immediate sting of the Act, litigants in 2022 nonetheless still must abide by several new disclosure requirements.

For example, defendants must automatically produce complete copies of insurance policies and broad information regarding the reduction or potential reduction of coverage limits by other lawsuits. This is in stark contrast from previous practices in which plaintiffs demanded insurance information in discovery. The amended Act also leaves intact the certification requirements—one from the insured defendant and one from an attorney appearing on behalf of the defendant—for veracity and completeness. Additionally, this obligation still exists for 60 days after settlement or final judgment.

As for the amendments, the New York Legislature amended the Act to:

1. Extend the time limit to comply with the requirements to 90 days after filing an answer (amended from 60 days).²

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2. Eliminate the requirement that defendants disclose applications for insurance.
 3. Require disclosure only of insurance policies that “relate to the claim being litigated” (amended from requiring disclosure of all insurance policies regardless of relevance to the subject of litigation).³
 4. Require the disclosure of total limits available under the applicable policy(ies), defined as “actual funds, after taking into account erosion and any other offsets, that can be used to satisfy a judgment” (amended from requiring details about lawsuits and payment of attorneys’ fees that reduced the policy limits).⁴
 5. Eliminate the “ongoing” obligation to provide updated information regarding policy erosion.⁵ Amended to only require disclosure at the time of: (a) filing of the note of issue, (b) entering into any formal settlement negotiations conducted or supervised by the court, (c) voluntary mediation, and (d) when the case is called for trial.
 6. Require only the disclosure of the name and email address of the person adjusting the claim (narrowed from previous requirement of name, telephone number, and email address of claim adjusters, third-party administrators, and third-party administrators’ supervisors).⁶
 7. Remove the requirement that policies such as “primary, excess and umbrella policies, contracts or agreements”—including self-insurance programs—be “sold or delivered within the state of New York.”

Notwithstanding the amendments to the Act, it remains imperative for defendants to have open communication with their insurance companies. Litigants still must monitor and prepare themselves to collect, calculate, and disclose detailed information about any policy’s previous erosion going forward. We refer the reader to our prior [alert](#) for best practices to streamline compliance with the Act.

¹ See N.Y. C.P.L.R. § 3101(f) (signed by Governor Hochul 31 December 2021).

² *Id.* § 3101(f).

³ *Id.* § 3101(f)(1)(i).

⁴ *Id.* § 3101(f)(1)(iv).

⁵ *Id.* § 3101(f)(2).

⁶ *Id.* § 3101(f)(1)(iii).

