



# Memo

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## **NEW YORK'S NEW INSURANCE DISCLOSURE OBLIGATION**

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An eleventh-hour change to New York's Civil Practice Law and Rules ("CPLR") on December 31, 2021 has increased the insurance disclosure obligation of defendants, creating an almost impossible burden on large corporations.

The Comprehensive Insurance Disclosure Act amends Section 3101(f) of the CPLR to require:

- Any defendant, third-party defendant or defendant on a crossclaim or counter claim to provide to their adversary within 60 days of answering, proof of the existence of any insurance agreement under which a person or party may be liable to indemnify or reimburse that party for any or all of a judgment entered against them.

Incredibly, the information to be provided is defined to include:

- all primary, excess and umbrella policies, contracts or agreements;
- a complete copy of each policy, contract or agreement including all endorsements, insuring agreements and the application to the policy in question
- complete contact information of all claims adjusters including telephone number and e-mail address (to include not only TPA contact information but contact information for person within the insuring entity to whom the TPA reports.
- amounts available under any policy to potentially satisfy a judgment
- identification of any lawsuits that have eroded or reduced subject policy limits, including caption, date the lawsuit was filed, and the identities of all involved attorney, with contact information
- the amount, if any, of any payment of attorneys' fees that have eroded or reduced the face value of the policy, including the name and address of the attorney receiving the fee payment.

Moreover, the disclosure obligation is continuing and must be updated within 30 days of receiving information that renders prior disclosure inaccurate or incomplete. This duty to update persists for 60 days after any settlement or entry of final judgment including all appeals.

In addition to the changes to CPLR 2121(f), a new section, 3122-b has been added to the CPLR to require a certification from the defendant, third-party defendant, crossclaim defendant and/or counterclaim defendant as to the accuracy and completeness of the disclosure and that reasonable efforts have been undertaken to find the information required by 3121(f).

The Comprehensive Insurance Disclosure Act, by its terms, was effective immediately, requiring disclosure in pending cases within 60 days of December 31, 2021.

## **AMENDMENTS TO THE COMPREHENSIVE INSURANCE DISCLOSURE ACT**

A sweeping amendment to the Comprehensive Insurance Disclosure Act has already been introduced.

This amendment, proposed on January 18, 2022, would give defendants 90 days in which to produce the insurance disclosure and would allow only a declarations page to be produced, if the plaintiff agrees to this in writing.

The amendment further proposes that only the name and e-mail address of a single assigned individual responsible for adjusting the claim be provided.

Perhaps most importantly, the detailed prior claim information requirement would be eliminated and only the total limits, adjusted to take into account erosion and any other offsets available under any policy, contract or agreement need be disclosed. Furthermore, the duty to update this information continually is eliminated and replaced by a requirement that such updated information be required at the time of the filing of a Note of Issue or before court supervised settlement negotiations, voluntary mediation and/or time of trial.

Finally, the Act, if amended, will not apply to pending actions, but only to those commenced on or after the effective date of the Act.