

New York Now Requires Defendants To Provide Automatic, Early Disclosure of Insurance Information

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Litigation Alert

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Defendants in New York are now required to automatically disclose expansive insurance information at the beginning of a lawsuit. Beyond just providing evidence of an insurance policy, the new version of the discovery rule CPLR 3101(f) now requires disclosures such as the contact information of an insurer's claim adjuster and information about whether attorney's fees have eroded the policy limits. Moreover, now a defendant and the defendant's attorney have to certify by affidavit or affirmation that the insurance disclosure is accurate.

New York Governor Kathy Hochul signed into law the Comprehensive Insurance Disclosure Act on December 31, 2021. The Act amends CPLR 3101(f), which previously contemplated that within the scope of discovery defendants could be asked to disclose the existence and contents of an insurance policy that may be called upon to satisfy a judgment, but did not require affirmative or unrequested disclosure, nor much of the information now required. The newly amended CPLR 3101(f) requires disclosure of "information and documentation" by a defendant to a plaintiff such as:

- all primary, excess and umbrella policies or insurance contracts (including the application for insurance);
- the contact information of a claim adjuster or third-party administrator;
- the amounts available under the insurance policy;
- any lawsuits that have or may reduce or erode the amounts available under the insurance policy—including contact information for the attorneys for all represented parties in such other lawsuits; and
- the amount of payment of attorney's fees that have reduced the face value of the policy (as well as the contact information for any attorney who received such payments).

The required insurance disclosure must be sworn to in a certification by both the defendant and defense counsel under a newly enacted provision, CPLR 3122-b. Additionally, CPLR 3101(f) says the insurance information needs to be updated through an ongoing obligation that exists "during the entire pendency of the litigation and for sixty days after any settlement or entry of final judgment in the case inclusive of all appeals."

The bill's sponsor memo indicates these changes seek to clarify what must be disclosed and when regarding insurance coverage, and to reduce delay in cases by explicitly compelling the disclosure of this information. Although it notes these issues often arise in personal injury cases, the text of the new CPLR 3101(f) does not limit these disclosure requirements to personal injury cases.

The Act went into effect on December 31, 2021, and further mandates that any required disclosures not previously provided in pending cases must be provided within 60 days of the effective date, which is March 1, 2022. This change to CPLR 3101(f) marks a significant change in discovery requirements imposed on defendants. Defendants will need to communicate with their insurers as well as with their counsel to comply with the new changes.

If you have questions or would like further information, please contact Rafael Vergara (vergarar@whiteandwilliams.com; 212.631.4416) or Monica Doss (dossm@whiteandwilliams.com; 212.868.4831).

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