

CLIENT ALERT

New York Governor Signs New Legislation Requiring Disclosure of Insurance Information in Litigation

January 6, 2022

On December 31, 2021, New York Governor Kathy Hochul signed into law the Comprehensive Insurance Disclosure Act, which requires defendants in New York civil suits to provide “complete information” of any insurance agreement through which a judgment could be satisfied. The required disclosure must be made within sixty days after serving an answer, and must include information regarding the extent to which the limits of the applicable policies have been eroded or impaired. Previously, New York’s CPLR § 3101(f) permitted civil discovery of “the existence and contents of any insurance agreement” under which an insurer may be liable for all or part of a judgment. The new disclosure requirement goes much further.

Specifically, the new law requires defendants to provide (1) complete copies of all potentially applicable primary, umbrella, and excess agreements, (2) insurance applications, (3) impairment or exhaustion information under the policies, and (4) contact information for persons responsible for adjusting the claim, including any third-party administrators and the person within the insuring entity to whom the third-party administrator reports.

The new requirements are detailed, and potentially burdensome, particularly regarding impairment or erosion of policy limits. Specifically, disclosure must be made not only of remaining policy limits but also of “any lawsuits that have reduced or eroded or may reduce or erode” policy limits, including the lawsuit caption, date filed, and attorney contact information for the represented parties to the lawsuit. The new legislation also requires the disclosure of amounts paid in “attorney’s fees that have eroded or reduced the face value of the policy” along with contact information for the attorneys receiving such payments.

This information must be provided within 60 days of service of the defendant’s answer, and the new law imposes a continuing obligation to update within 30 days of receiving new information. This continuing obligation lasts through the pendency of the case and for 60 days following settlement or entry of judgment.

Finally, all information provided must be accompanied by a certification that the information is complete and accurate.

The new law specifies that it is effective immediately and applies to pending matters. Defendants must provide the newly required information within 60 days of the law’s effective date, on or before March 1, 2022. Insurers should expect and be prepared for inquiries from policyholders involved in New York pending litigation. Insurers will be asked to provide the necessary information including information about erosion of policy limits and other pending lawsuits that may erode limits, and to assist policyholders in complying with the ongoing obligation to update, including as future claims are paid that will affect remaining policy limits.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

Laura Foggan

Partner – Washington, D.C.

Phone: +1.202.624.2774
Email: lfoggan@crowell.com

Miranda H. Turner

Partner – Washington, D.C.
Phone: +1.202.624.2659
Email: mturner@crowell.com

Kelly H. Tsai

Senior Counsel – New York
Phone: +1.212.803.4069
Email: ktsai@crowell.com

Jamie M. Zeevi

Associate – New York
Phone: +1.212.895.4308
Email: jzeevi@crowell.com