

Client Alert

O'TOOLE SCRIVO

ATTORNEYS AT LAW

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NEW YORK'S COMPREHENSIVE INSURANCE DISCLOSURE ACT

WHAT INSURERS, POLICYHOLDERS, AND THEIR COUNSEL NEED TO KNOW

Gone are the days when a defendant's liability insurance policy in a personal injury or other tort action was deemed irrelevant. Those days were before the adoption of the Civil Practice Law and Rules ("CPLR") by the New York Legislature, with questions regarding the relevance of these policies continuing through its first dozen years. Since then, there have been inconsistent interpretations and applications of CPLR 3101(f). By March 1, 2022, those inconsistencies, which have been enjoyed by some since 1975, will also be a thing of the past.

On December 31, 2021, New York Governor Kathy Hochul signed the Comprehensive Insurance Disclosure Act (the "Act") ([Senate Bill S7052](#)) into law. The Act vastly changes the complexion of the insurance disclosure requirements of CPLR§3101(f) and imposes a multi-layered certification requirement not limited to personal injury matters. These provisions combine to impose, upon defendants and counsel, the affirmative obligation

to provide "notice and proof of the existence and contents of any insurance agreement" and to certify—in the form of an affirmation or affidavit—the accuracy of the information provided within sixty days after service of an Answer.

Specifically, and in part for the first time, the Act requires disclosure of:

(i) **All primary, excess and umbrella policies**, contracts or agreements issued by private or publicly traded stock companies, mutual insurance companies, captive insurance entities, risk retention groups, reciprocal insurance exchanges, **syndicates, including, but not limited to, Lloyd's underwriters** as defined in section six thousand one hundred sixteen of the insurance law, **surplus line insurers and self-insurance programs** sold or delivered within the State of New York;

(ii) **A complete copy of any policy**, contract or agreement referred to in subparagraph (i) of this paragraph, including, but not



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limited to, declarations, insuring agreements, conditions, exclusions, endorsements, and similar provisions;

(iii) **The contact information, including telephone number and e-mail address, of any person or persons responsible for adjusting the claim** made to or against the person or entity described in subparagraph (i) of this paragraph, **including third-party administrators and persons within the insuring entity to whom the third-party administrator is required to report**;

(iv) **The amounts available under any policy**, contract or agreement to satisfy a judgment described in this subdivision or to reimburse for payments made to satisfy the judgment;

(v) **Any lawsuits that have reduced or eroded or may reduce or erode such amounts** referred to in subparagraph (iv) of this paragraph, **including the caption of any such lawsuit, the date the lawsuit was filed, and the identity and contact information of the attorneys for all represented parties therein**; and

(vi) **The amount, if any, of any payment of attorney's fees that have eroded or reduced the face value of the policy, along with the name and address of any attorney who received such payments.**"

The Act imposes an "ongoing obligation" to ensure that this comprehensive disclosure remains accurate and complete and to update all parties of a change within thirty days of becoming aware of the change. This obligation continues throughout "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."

We will work closely with our clients to ensure compliance with these new comprehensive insurance disclosure requirements. If anyone has any questions regarding the changes, please contact OS partner [Anthony Capasso](#) directly.