STATE OF NEW YORK

8852--A

Cal. No. 378

IN ASSEMBLY

January 18, 2022

Introduced by M. of A. LUNSFORD -- read once and referred to the Committee on Judiciary -- advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the civil practice law and rules, in relation to insurance disclosures; and to amend a chapter of the laws of 2021 amending the civil practice law and rules relating to insurance disclosures, as proposed in legislative bills numbers S. 7052 and A. 8041, in relation to the effectiveness thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision (f) of section 3101 of the civil practice law and rules, as amended by a chapter of the laws of 2021 amending the civil practice law and rules relating to insurance disclosures, as proposed in legislative bills numbers S. 7052 and A. 8041, is amended to read as follows:

(f) Contents of insurance agreement. (1) [~~Any~~] **No later than ninety days after service of an answer pursuant to rule three hundred twenty or section three thousand eleven or three thousand nineteen of this chapter, any** defendant, third-party defendant, or defendant on a cross-claim or counter-claim shall provide to the plaintiff, third-party plaintiff, plaintiff on counter-claim, and any other party in the action [~~within sixty days after serving an answer pursuant to rule three hundred twenty or section three thousand eleven or three thousand nineteen of this chapter notice and~~] proof of the existence and contents of any insurance agreement **in the form of a copy of the insurance policy in place at the time of the loss or, if agreed to by such plaintiff or party in writing, in the form of a declaration page,** under which any person or entity may be liable to satisfy part or all of a judgment that may be entered in the action or to indemnify or reimburse for payments made to satisfy the entry of final judgment. **A plaintiff or party who agrees to accept a declaration page in lieu of a copy of any insurance policy does not waive the right to receive any other information required to be provided under this subdivision, and may revoke such agreement at any time, and upon notice to an applicable defendant of such revocation, shall be**

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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provided with the full copy of the insurance policy in place at the time of the loss. Information and documentation, as evidenced in the form of a copy of the insurance policy in place at the time of the loss or the declaration page, pursuant to this subdivision shall include:

(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~~] insofar as such documents relate to the claim being litigated;

(ii) if the insurance policy in place is provided, a complete copy of any policy, contract or agreement under which any person or entity may be liable to satisfy part or all of a judgment that may be entered in the action or to indemnify or reimburse for payments made to satisfy the entry of final judgment as referred to in [~~subparagraph (i) of~~] this paragraph, including, but not limited to, declarations, insuring agreements, conditions, exclusions, endorsements, and similar provisions;

(iii) the contact information, including [~~telephone number~~] the name 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~~] an assigned individual responsible for adjusting the claim at issue; and

(iv) the [~~amounts~~] total limits available under any policy, contract or agreement, which shall mean the actual funds, after taking into account erosion and any other offsets, that can be used 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~~].

(2) A defendant, third-party defendant, or defendant on a cross-claim or counter-claim required to produce to a plaintiff or third-party plaintiff or plaintiff on a counter-claim all information set forth in paragraph one of this subdivision [~~has an ongoing obligation to~~] must make reasonable efforts to ensure that the information remains accurate and complete, and provide updated information to any party to whom this information has been provided [~~within thirty days of receiving information rendering the prior disclosure inaccurate or incomplete in whole or in part. This obligation shall exist during the entire pendency of the litigation~~] at the filing of the note of issue, when entering into any formal settlement negotiations conducted or supervised by the court, at a voluntary mediation, and when the case is called for trial, and for sixty days after any settlement or entry of final judgment in the case inclusive of all appeals.

(3) For purposes of this subdivision, an application for insurance shall not be treated as part of an insurance agreement [~~and shall be disclosed~~]. Disclosure of policy limits under this section shall not

constitute an admission that an alleged injury or damage is covered by the policy.

(4) Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial.

(5) The requirements of this subdivision shall not apply to actions brought to recover motor vehicle insurance personal injury protection benefits under article fifty-one of the insurance law or regulation sixty-eight of title eleven of the New York codes, rules and regulations.

§ 2. Section 4 of a chapter of the laws of 2021 amending the civil practice law and rules relating to insurance disclosures, as proposed in legislative bills numbers S. 7052 and A. 8041, is amended to read as follows:

§ 4. This act shall take effect immediately and apply to all [~~pending~~] actions[~~. Any information required by this act that has not previously been provided in pending cases shall be provided within sixty days~~] **commenced on or** after such effective date.

§ 3. This act shall take effect immediately provided, however that section one of this act shall take effect on the same date and in the same manner as a chapter of the laws of 2021 amending the civil practice law and rules relating to insurance disclosures, as proposed in legislative bills numbers S. 7052 and A. 8041, takes effect.