STATE OF NEW YORK

7052

2021-2022 Regular Sessions

IN SENATE

May 26, 2021

Introduced by Sen. GOUNARDES -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, in relation to insurance disclosures

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

Section 1. Short title. This act shall be known and may be cited as the "comprehensive insurance disclosure act."

§ 2. Subdivision (f) of section 3101 of the civil practice law and rules, as added by chapter 668 of the laws of 1975, is amended to read as follows:

(f) Contents of insurance agreement. [~~A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purpose of this subdivision, an application for insurance shall not be treated as part of an insurance agreement~~] **(1) 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 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. Information and documentation pursuant to this subdivision shall include:**

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

LBD11693-01-1

(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 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.

(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 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 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 be treated as part of an insurance agreement and shall be disclosed.

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

§ 3. The civil practice law and rules is amended by adding a new section 3122-b to read as follows:

§ 3122-b. Certification of insurance disclosure. Information provided pursuant to subdivision (f) of section thirty-one hundred one of this article shall be accompanied by a certification by the defendant, third-party defendant, or defendant on a cross-claim or counter-claim and a certification by any attorney appearing for the defendant, third-party defendant, or defendant on a cross-claim or counter-claim, sworn in the form of an affidavit or affirmation where appropriate, stating that the information is accurate and complete, and that reasonable efforts have been undertaken, and in accordance with paragraph two of subdivision (f)

of section thirty-one hundred one of this article will be undertaken, to ensure that this information remains accurate and complete.

§ 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 after such effective date.