

Expert Insights: Chubb Excess Casualty's Liability Market Analysis

This Expert Insights edition focuses on recent laws passed in New York and New Jersey. On the surface, both laws which are described in more detail below, deliver greater transparency to plaintiffs and accountability against insurers and their defendant insureds. However, these laws may prolong and complicate aspects of litigation and ultimately increase the cost of insurance for New York and New Jersey insureds.



New York's Comprehensive Insurance Disclosure Act

On December 31, 2021, New York Governor Kathy Hochul signed the **Comprehensive Insurance Disclosure Act** (the "Act") into law. The Act and its recently passed amendments require that any defendant, third-party defendant, or defendant on a cross-claim or counterclaim, provide certain insurance information within 90 days after filing an answer.



The Act will only apply to defendants litigating in New York State Courts and only to those actions filed after December 31, 2021. More specifically, 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 the plaintiff in writing, in the form of a declaration page must be provided.

The defendant must disclose all primary, excess, and umbrella policies, and a complete copy of those policies, including declarations, insuring agreements, conditions, exclusions, endorsements, and similar provisions, insofar as such documents relating to the claim being litigated. However, by written agreement, only the declaration pages of those policies must be produced.

Additionally, the defendant must disclose the contact information, including the name and email address, of an assigned individual responsible for adjusting the claims at issue, as well as the total limits available under any policy, contract, or agreement.

The application(s) for insurance will NOT be treated as part of an insurance agreement and its production is not required. The defendant/insured and its appointed defense counsel must certify that the information is accurate and complete and that reasonable efforts were undertaken to ensure such, and they have a continued obligation to ensure that the information remains accurate and complete. These requirements do not apply to actions for no-fault benefits.

New Jersey Insurance Fair Conduct Act

New Jersey Governor Phil Murphy signed the “**New Jersey Insurance Fair Conduct Act**” into law on January 19, 2022, allowing motorists to sue their insurance companies for “unreasonably” late or denied coverage benefits and unfair settlement practices.

The bill offers no standard or explanation regarding what period or denial reason constitutes an “unreasonable” one. The bill further allows for the recovery of three times the coverage amount purchased as damages, and also includes pre-and post-judgment interest, attorney’s fees, and litigation expenses.

We expect that the passage of the bill will result in a surge of bad faith allegations under the **Unfair Claims Settlement Practices Act** as plaintiffs seek to test the limits of the new law.



The additional claims will likely result in higher rates for insureds as insurers attempt to handle an influx of claims, and there may be a need for the review of claims practices by insurers to

reconcile the new law and the additional requirements the new law presents on auto claims.



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