

NY CLS CPLR § 3101, Part 1 of 3

Current through 2022 released Chapters 1-49, 61-172

New York Consolidated Laws Service > Civil Practice Law And Rules (Arts. 1 — 100) > Article 31 Disclosure (§§ 3101 — 3140)

§ 3101. Scope of disclosure.

(a) **Generally.** There shall be full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof, by:

- (1) a party, or the officer, director, member, agent or employee of a party;
- (2) a person who possessed a cause of action or defense asserted in the action;
- (3) a person about to depart from the state, or without the state, or residing at a greater distance from the place of trial than one hundred miles, or so sick or infirm as to afford reasonable grounds of belief that he or she will not be able to attend the trial, or a person authorized to practice medicine, dentistry or podiatry who has provided medical, dental or podiatric care or diagnosis to the party demanding disclosure, or who has been retained by such party as an expert witness; and
- (4) any other person, upon notice stating the circumstances or reasons such disclosure is sought or required.

(b) **Privileged matter.** Upon objection by a person entitled to assert the privilege, privileged matter shall not be obtainable.

(c) **Attorney's work product.** The work product of an attorney shall not be obtainable.

(d) **Trial preparation.**

1. Experts.

(i) Upon request, each party shall identify each person whom the party expects to call as an expert witness at trial and shall disclose in reasonable detail the subject matter on which each expert is expected to testify, the substance of the facts and opinions on which each expert is expected to testify, the qualifications of each expert witness and a summary of the grounds for each expert's opinion. However, where a party for good cause shown retains an expert an insufficient period of time before the commencement of trial to give appropriate notice thereof, the party shall not thereupon be precluded from introducing the expert's testimony at the trial solely on grounds of noncompliance with this paragraph. In that instance, upon motion of any party, made before or at trial, or on its own initiative, the court may make whatever order may be just. In an action for medical, dental or podiatric malpractice, a party, in responding to a request, may omit the names of medical, dental or podiatric experts but shall be required to disclose all other information concerning such experts otherwise required by this paragraph.

(ii) In an action for medical, dental or podiatric malpractice, any party may, by written offer made to and served upon all other parties and filed with the court, offer to disclose the name of, and to make available for examination upon oral deposition, any person the party making the offer expects to call as an expert witness at trial. Within twenty days of service of the offer, a party shall accept or reject the offer by serving a written reply upon all parties and filing a copy thereof with the court. Failure to serve a reply within twenty days of service of the offer shall be deemed a rejection of the

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offer. If all parties accept the offer, each party shall be required to produce his or her expert witness for examination upon oral deposition upon receipt of a notice to take oral deposition in accordance with rule thirty-one hundred seven of this chapter. If any party, having made or accepted the offer, fails to make that party's expert available for oral deposition, that party shall be precluded from offering expert testimony at the trial of the action.

(iii) Further disclosure concerning the expected testimony of any expert may be obtained only by court order upon a showing of special circumstances and subject to restrictions as to scope and provisions concerning fees and expenses as the court may deem appropriate. However, a party, without court order, may take the testimony of a person authorized to practice medicine, dentistry or podiatry who is the party's treating or retained expert, as described in paragraph three of subdivision (a) of this section, in which event any other party shall be entitled to the full disclosure authorized by this article with respect to that expert without court order.

(iv) [Repealed]

2. Materials. Subject to the provisions of paragraph one of this subdivision, materials otherwise discoverable under subdivision (a) of this section and prepared in anticipation of litigation or for trial by or for another party, or by or for that other party's representative (including an attorney, consultant, surety, indemnitor, insurer or agent), may be obtained only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the case and is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of the materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions or legal theories of an attorney or other representative of a party concerning the litigation.

(e) **Party's statement.** A party may obtain a copy of his own statement.

(f) Contents of insurance agreement. (1) 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 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 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 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 this paragraph, including, but not limited to, declarations, insuring agreements, conditions, exclusions, endorsements, and similar provisions;

(iii) the contact information, including the name and e-mail address, of an assigned individual responsible for adjusting the claim at issue; and

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(iv) the 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

(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 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 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. 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.

(g) **Accident reports.** Except as is otherwise provided by law, in addition to any other matter which may be subject to disclosure, there shall be full disclosure of any written report of an accident prepared in the regular course of business operations or practices of any person, firm, corporation, association or other public or private entity, unless prepared by a police or peace officer for a criminal investigation or prosecution and disclosure would interfere with a criminal investigation or prosecution.

(h) **Amendment or supplementation of responses.** A party shall amend or supplement a response previously given to a request for disclosure promptly upon the party's thereafter obtaining information that the response was incorrect or incomplete when made, or that the response, though correct and complete when made, no longer is correct and complete, and the circumstances are such that a failure to amend or supplement the response would be materially misleading. Where a party obtains such information an insufficient period of time before the commencement of trial appropriately to amend or supplement the response, the party shall not thereupon be precluded from introducing evidence at the trial solely on grounds of noncompliance with this subdivision. In that instance, upon motion of any party, made before or at trial, or on its own initiative, the court may make whatever order may be just. Further amendment or supplementation may be obtained by court order.

(i) In addition to any other matter which may be subject to disclosure, there shall be full disclosure of any films, photographs, video tapes or audio tapes, including transcripts or memoranda thereof, involving a person referred to in paragraph one of subdivision (a) of this section. There shall be disclosure of all portions of such material, including out-takes, rather than only those portions a party intends to use. The provisions of this subdivision shall not apply to materials compiled for law enforcement purposes which are exempt from disclosure under section eighty-seven of the public officers law.

History

Add, L 1962, ch 308, eff Sept 1, 1963; amd, L 1975, ch 668, eff Aug 6, 1975; L 1979, ch 268, § 1; L 1980, ch 283, § 1, eff Sept 1, 1980; L 1984, ch 294, § 2, eff Sept 1, 1984; L 1985, ch 294, § 4; L 1986, ch 485, § 4; L 1988, ch 184, § 2, eff July 1, 1988; L 1991, ch 165, § 45, eff Oct 1, 1991; L 1993, ch 98, §§ 1, 2, eff Jan 1, 1994; L 1993, ch 574, § 1, eff Sept 1, 1993; L 2012, ch 438, § 5, eff Feb 17, 2014; L 2013, ch 23, § 4, eff Feb 17, 2014; L 2021, ch 832, § 2, effective December 31, 2021; L 2022, ch 136, § 1, effective December 31, 2021.

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