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New New York Practice and Securing Additional Insured Coverage

By Jason Kosek & Ethan W. Middlebrooks

New York Practice underwent a change on April 18, 2026, with the new AVOID Act, CPLR § 1007, becoming effective. This law is intended to impact third-party practice by speeding up the clock on key deadlines. It is important for policyholders to be mindful and prepared with this new change, as third-party practice has proven necessary for policyholders to secure valuable additional insured coverage and its corresponding duty to defend.

The New York AVOID Act

The AVOID Act forces almost immediate identification and introduction of third-party defendants. New CPLR § 1007 establishes rigid deadlines for filing third-party actions, altering procedural practice in New York civil litigation. Under the new statutory regime, a party must file a third-party complaint for a contractual action (e.g., indemnification, breach of contract for failing to procure insurance) within 60 days of serving an answer, and 60 days from the discovery of a non-contractual claim such as negligence. There is then a cascading timeline for the next tiers of impleaders, of 45 days, 30 days, then 20 days, running from the service of the immediately preceding third-party answer. Stipulations for extensions are capped at 30 days, and there is no third-party impleader after the note of issue is filed. Prior to the AVOID Act, a defendant could add a third party at any time prior to the filing of the note of issue.

This new rigidity means defendants can no longer adopt a wait-and-see approach to impleader. They instead must be prepared to undertake comprehensive indemnification analysis, insurance investigation, and liability assessment within days of filing an answer, or sooner. The result of the strict deadlines may be blanket impleader of all potentially liable parties. For example, in labor law or construction defects litigation, both common in New York, this could mean naming every subcontractor who set foot on the project site, regardless of their apparent connection to the alleged injury, to ensure a party is not overlooked. This fundamentally restructures defense strategy and might impact a litigant's ability to seek additional insured coverage or contractual indemnification otherwise owed to that party.

In many construction lawsuits it is common for a contractor to sue a third-party subcontractor for contractual indemnification and breach of contract for failure to procure insurance coverage. The latter claim tends to be based on a denial of additional insured coverage by the subcontractor's insurance company. Such a claim might not be ripe within the 60-day time period of answering a complaint, and therefore may not be one that can be brought within the AVOID Act's requirements. There are also important considerations for using third-party practice to help secure additional insured coverage by making sure it is clear that the claims against a contractor are caused in whole or in part by a subcontractor's acts or omissions. A party now must be prepared to enact these considerations promptly.

Using Third-Party Practice To Secure Additional Insured Coverage

For policyholders, particularly in the construction industry, additional insured coverage is expected and welcomed. With additional insured coverage, a policyholder can have its defense paid for by another party's insurance so the policyholder's own loss history is less impacted, and the policyholder may be able to avoid paying an otherwise required deductible or retention. However, even where additional insured coverage may be contractually required, insurance companies do not always readily accept it. In such instances, a policyholder may have to resort to third-party practice to achieve additional insured coverage.

This approach is well recognized by courts in coverage matters that concern underlying cases where third-party complaints have been necessary to secure additional insured coverage. Such cases have commonly (but not solely) arisen in the context of injury during a construction project when there is a fall from height, supporting allegations under New York's Gravity Law for claims of strict liability against multiple levels of parties regardless of privity. Thus, contractors and owners often are sued by an injured employee of a subcontractor, but the subcontractor itself has not been sued because of Workers' Compensation restrictions. When the contractor and owner seek the additional insured coverage the subcontractor contractually owes, the subcontractor's insurance company typically denies coverage because the underlying complaint does not allege that the subcontractor caused in whole or in part the complained-of injuries, sufficient to trigger the additional insured coverage. In this scenario, the contractor or owner may have to implead the subcontractor through a third-party complaint, incorporating the allegations of the plaintiff's complaint into the third-party claims against the subcontractor, and alleging that the plaintiff-employee's injuries arose from the acts or omissions of the subcontractor.

In attempting to disclaim their additional-insured obligations in these situations, insurance companies have asserted that the general contractor's third-party complaint against the subcontractor is self-serving or otherwise not credible. This exact situation has been litigated multiple times in favor of coverage. For example, in the 2021 case *Axis Construction Corp. v. Travelers Indemnity Co. of America, No.* 20-cv-1125, 2021 WL 3912562 (E.D.N.Y. Sept. 1, 2021), a general contractor was found to be entitled to defense coverage as an additional insured to a subcontractor's liability insurance, even though the original lawsuit was not brought against the subcontractor. The general contractor later filed a third-party claim against the subcontractor, which the court found to trigger the duty of the subcontractor's insurance company to defend the general contractor through the allegations in the third-party complaint that established the possibility that the general contractor's liability to the employee, if any, might have been caused, in whole or in part, by the acts or omissions of the subcontractor. Because the subcontractor itself now faced potential liability through that third-party complaint, additional insured coverage existed for the general contractor. See also T*he Travelers Indem. Co. v. State Nat'l Ins. Co.,* No. 23-cv-00496, 2026 WL 880106, at *2 (E.D.N.Y. Mar. 31, 2026) (Slip Op.) ("Against this backdrop, the Court held that Defendant's duty to defend in the Underlying Action was triggered by the Barr parties' third-party complaint squarely placing CRC, Defendant's insured, within the ambit of liability for the injuries complained of in the Underlying Action."); *Travelers Indem. Co. v. Harleysville Ins. Co.*, No. 21-CV-1089, 2024 WL 5657654, at *5 (E.D.N.Y. May 7, 2024) ("New York law allows courts to examine extrinsic evidence, such as a third-party complaint, to determine whether a party has sufficiently pleaded that an insured, or additional insured, was the proximate cause of a plaintiff's injuries. . . ."); *All State Interior Demo. Inc. v. Scottsdale Ins. Co.,* 168 A.D.3d 612, 613 (1st Dep't 2019) ("[T]he third-party complaint brought in the underlying action by plaintiffs herein against United, incorporates the underlying complaint by reference, alleges that United was negligent, and seeks indemnification from United, and is therefore sufficient to trigger Scottsdale's obligation to defend All State.").

The AVOID Act Changes The Approach For "Self Help" Third-Party Practice

Under the old New York practice regime, parties could wait on third-party practice needed to secure potential indemnification and additional insured coverage. That is well demonstrated by the decision in *Consolidated Edison Company of New York v. ACE American Ins. Co.*, 674 F. Supp. 3d 475 (S.D.N.Y. 2023). There, in an underlying action, a tenant of a building sued the building owner and manager in 2017 after being hurt in a slip and fall on the sidewalk outside the building. The owner and manager impleaded ConEd in 2019, which allegedly caused the sidewalk conditions due to gas line work. ConEd timely answered the third-party complaint with cross-claims. Over 18 months later, ConEd filed its own third-party complaint against a contractor that performed the alleged work for ConEd that resulted in the underlying plaintiff's injury. Following denial of additional insured coverage for ConEd by the contractor's insurance company, ConEd filed its coverage action, and the court granted summary judgment for ConEd and held that the insurance company must defend ConEd as an additional insured. *See id*. at 490 ("A court may—and an insurer must—consider the allegations contained in a third party complaint brought in the underlying action by a plaintiff in a coverage action.").

Had the underlying case been filed under the mandates of the AVOID Act and its strict series of deadlines, ConEd's third-party complaint against its contractor likely would have been untimely and may have been barred. There is a serious risk that ConEd would have been unable to secure defense coverage as an additional insured from the contractor's insurance.

Practices To Be Prepared Under The New AVOID Act Regime

The AVOID Act exposes a gap that has always existed but was masked by the flexibility of the old third-party practice rules. Knowing the deadlines required by the AVOID Act is not enough. Contractors, owners, and other policyholders would be better protected by being well-prepared in real time. Pre-project contracting may require more details regarding subcontractors' insurance policies sufficient to inform the contractor or owner what the actual additional insured endorsements are in those policies, whether the endorsements and policies cover completed operations, and how notice may be given. A directory included as an exhibit to the project contract would provide a universe of potentially liable parties. Then before the new deadline set by the AVOID Act, appropriate third-party complaints can be drafted and filed.

Policyholders must be ready to initiate actions against parties that may owe them common law indemnification, contractual indemnification, and additional insured coverage. That information should be accessible when a claim is filed, not when discovery closes, so that third-party practice may be timely initiated. In summary: prepare in advance to avoid delay under the AVOID Act. The diligence employed today may assist when time is short and the clock is ticking to bring a third-party claim in future lawsuits in New York. Determining quickly what third parties may face liability and need to be added to a lawsuit may be needed to achieve and maximize additional insured insurance coverage and the valuable duty to defend that accompanies it.

Authors

Jason Kosek / *jkosek@andersonkill.com*
Jason is a shareholder in Anderson Kill's New York office and a member of the firm's Construction, Insurance Recovery, and Commercial Litigation practices. He co-chairs the firm's Data Center Practice Group and Energy & Renewables Industry Group.

Ethan W. Middlebrooks / *emiddlebrooks@andersonkill.com*
Ethan is a shareholder in Anderson Kill's New York office, where he concentrates his practice in insurance recovery, exclusively on behalf of policyholders. He is a member of the firm's Construction Group

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