



UPDATE ON THIRD-PARTY PRACTICE IN NEW YORK STATE

By Jeffrey R. Beitler¹

Governor Hochul recently signed into law a significant amendment which greatly impacts the time to commence third-party litigation, also known as impleader actions, in New York. The act is known as the Avoiding Vexatious Overuse of Impleading to Delay (AVOID) act, and became effective on April 18, 2026. While Section 1007 of the New York Civil Practice Law and Rules (CPLR) previously allowed for a defendant to proceed with a third-party action seeking contribution and/or indemnification during the course of the litigation prior to trial, the AVOID act now imposes much stricter deadlines on defendants and third-party defendants to pursue such claims.

Notably, the newly amended CPLR Section 1007 sets forth that a Third-party Summons and Complaint shall be served by a defendant no more than 90 days after serving its Answer without an Order of the court. CPLR Section 1007 does allow for the initiation of a Third-party Summons and Complaint after the 90 day deadline under specific circumstances if the newly impleaded party is the employer of the plaintiff.

The language of the AVOID act seems to somewhat contradict and slightly further limit the timeframes within which to commence third-party litigation beyond those set forth in CPLR Section 1007. Specifically, AVOID limits the defendants to 60 days to initiate a third-party action, when that liability arises from a contractual relationship, or within 60 days of becoming aware that such person is or may be liable to the defendant for all or part of a plaintiff's claim. The AVOID act further limits third-party defendants intending to commence a second third-party action to 45 days from service of their Answer to the Third-party Complaint. Similarly, the timeframe is shortened if a second third-party defendant decided to commence a third third-party action to 30 after serving an Answer to the Second Third-party Complaint. Any subsequent third-party defendant has only 20 days to initiate a further third-party action after serving their Answer.

Significantly, the AVOID act states that there will be no extension of time longer than 30 days without a court Order, noting that a defendant or third-party defendant may not proceed with the filing and service of a Third-party Summons

and Complaint 12 months after having filed an Answer, without written consent of both the plaintiff and the court.

ANALYSIS AND CONCLUSION

While the language of the CPLR and the AVOID act appear to differ slightly, which we anticipate will be addressed and resolved at some time in the near future, both new rules will no doubt result in a significant increase in third-party litigation at the very earliest stages of discovery when it is not only difficult to fully assess the identity of parties, but also their potential liability for the claimed damages. This, in turn, will result in increased motion practice seeking dismissal by those parties who argue they were wrongfully impleaded. However, such early impleader actions will be commenced in order to avoid being precluded from doing so at a later date as now set forth in both the CPLR and the AVOID act.

These new rules result in forcing the hands of the defendants to bring entities and individuals into cases prior to completion of essential discovery necessary to properly identify the appropriate parties that should be added to the litigation. Another potential downfall of these new rules to the defendants will be that various parties who may actually face liability exposure may be precluded from being added into the action if they are not promptly identified and impleaded into the litigation pursuant to these new, stringent and shorter, deadlines. While arguably such entities could be sued in separate litigations, provided the controlling Statute of Limitations has not expired, the result would nonetheless be an increase in both time and expense expended by the defendants pursuing such separate, and arguably unnecessary, litigation.

We anticipate that in support of the amended CPLR Section 1007 and the new Avoid act both the court and plaintiffs' counsels will argue that litigation will now move forward at a more rapid pace. While that may prove to be true, it comes at a significant expense to the defendants. It is likely that these changes will result in challenges to the law, and potential amendments, both of which we will continue to monitor and provide updates on. However, for the time being, when a design professional is sued, they should immediately consult with their legal counsel, who are well versed in this area of the law, to identify all of the separate entities and individuals involved in the subject project to fully assess their roles and responsibilities. Doing so will enable the design professional and their attorney to determine whether third party actions should be timely commenced against such parties pursuant to these new rules, and to protect the design professionals from being precluded from doing so at a later date.

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