ANALYSIS & RAMIFICATIONS OF THE AVOID ACT

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The AVOID Act amends CPLR §1007, which has been the governing law for third-party practice impleaders since 1963. Prior to the adoption of the AVOID Act, CPLR §1007 had no fixed deadlines for adding third parties to an existing lawsuit. However, courts and litigators have always had an effective tool to manage late impleaders in CPLR §1010, which gives a judge the ability and discretion to dismiss a third-party Complaint or order a separate trial. This law replaces that discretion with draconian deadlines that present a threat to a defendant's ability to fully defend itself by interposing informed impleaders based on facts and potential evidence adduced during discovery, particularly as regards the risk transfer devices I discuss below.

The original wording of the new AVOID Act made the law effective on the date of its signing, December 19, 2025, and was made applicable to all cases filed on or before December 19th. It prescribed different time periods within which the defendant, or the third-party defendant, or the fourth party defendant, had to implead another party into the case. However, on February 13th, 2026, Governor Hochul signed into law a set of Chapter Amendments, A.9502 and SS §809, merging under SS §809. Only actions commenced on or after April 18th, 2026, will be subject to the AVOID Act's impleaders practice deadlines.

As such, all third-party actions associated with lawsuits commenced on or after April 18th, 2026, must be filed within 90 days of serving an answer, as a matter of right; however, a court order could extend the 90-day deadline. The amendments are not retroactive and do not affect lawsuits commenced before April 18th, 2026. While a court order could extend the deadline to implead if, "good cause" or the "interest of justice", are established, this will be an uphill battle as these are undefined terms in the AVOID Act.

Furthermore, the legislative history of this law states the purpose of the new law is to ensure all impleaders are completed within 12 months of the original filing of the action. The legislative history goes on to state, "Defendants in civil cases developed an egregious strategy to add years to any case, and, during that respite, avoid financial responsibility." The legislative history goes on to assert, without supporting citations, that, "defendants deliberately delay the case using impleaders".

No doubt knowing of the statutorily mandated unlimited indemnity requirement for the 1B section of an employer's Workers Compensation policy, The New York Legislature was very generous in allowing an employer to be impleaded into an action (yet another risk transfer device) up to 90 days after the identity of the employer is ascertained (see CPLR §1007[d]).

The time restrictions in CPLR §1007(1) "shall" not apply when a defendant or third-party defendant seeks contribution or indemnification from the plaintiff's employer, but whose identity is not yet known by the defendant or third-party defendant. In either instance the defendant or third-party defendant "shall" file suit against the employer 90 days after the later of either the identification of the employer or if the defendant or third-party defendant is seeking contribution or indemnification for a “grave injury”.

If the third-party action is severed from the initial action and the third-party plaintiff initiates a new action by the filing of a summons and complaint against the third-third-party any motion to consolidate the cases “shall not” be permitted.

While the “safe harbor” for many litigants when facing tight time constraints has been the tried-and-true stipulation extending time (CPLR§2104), the AVOID Act anticipates such moves but does not allow for such extensions beyond 30 days absent a court order (CPLR §1007[5]). Moreover, third-party practice after the filing of a note of issue is not permitted (CPLR §1007[c]., absent a showing of “good cause” or “in the interest of justice.”

Even a cursory review of the AVOID Act reveals that the draconian imposition of very tight deadlines on impleaders by a defendant presents potential complicating factors to successful execution on one or more of the five risk transfer devices mentioned above. The AVOID Act also removes discretion from the court in its management of cases by imposing artificial drop-dead dates, relief from which is removed from the court by the terms of the new law.

STRATEGIC ANALYSIS

The AVOID Act fundamentally shifts the timing of risk-transfer decisions to the earliest stages of litigation. Defendants can no longer wait for Discovery to unfold before identifying potential third-party defendants. The compressed deadlines will be particularly challenging in complex matters involving multiple potential parties, such as product liability cases, construction defect cases and claims under New York Labor Law §§ 240(1) and 241(6), where contractual indemnification provisions, the relationships among project participants, and the allocation of liability may not be immediately clear.

The AVOID Act's "becoming aware" standard for noncontractual claims will likely generate litigation over when the 90-day clock begins. Disputes may arise concerning whether accident reports, requests for information, project documents, insurance correspondence, or other communications should have triggered a defendant's awareness of a potential third-party defendant's liability.

Additionally, because the AVOID Act limits a defendant's ability to implead parties but does not restrict the plaintiff's control over the case, plaintiffs may gain increased settlement leverage by strategically timing the filing of a Note of Issue to cut off third-party claims before they can be asserted.

RECOMMENDED STRATEGIC STEPS FOR THE CLAIMS PROFESSIONAL AND COUNSEL

1) Engage in early and thorough pre-suit investigation to identify prospective targets.

2) Obtain all relevant contracts and insurance policies in furtherance of risk transfer efforts.

3) Consider pre-Answer motion practice in the event a pleading is vague or ambiguous as a pre-Answer motion does not “Start the Clock” as an Answer would.

4) Obtain extension of time to answer for further investigation into possible culpable parties.

5) Closely monitor for Note of Issue deadline

6) Review Pending matters- defense counsel should determine if impleader should be made in all post 4/18/26 filed matters as early as possible.

The AVOID Act places a premium on sophisticated claims handling teamed with a knowledgeable litigation firm with strong experience in construction, product liability, toxic tort, environmental, professional liability medical device and medical malpractice, and life sciences claims.

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