



Estimated Cost Impact Analysis of S.6552 / A.2373 (2019)

The Rating Board estimates that S.6552 / A.2373 (2019), if enacted in its current form, will result in approximately \$150M in additional losses annually. Since almost all claims affected by this legislation are in the construction industry, the contracting classification codes will bear the cost increase, which amounts to an 11.2% increase in loss costs for those class codes.

Bill Description

This bill amends the Civil Practice Law and Rules to allow a plaintiff (injured worker) to recover on a judgment for contribution or indemnification directly against the third-party defendant when the defendant/third-party plaintiff fails to satisfy the underlying judgment for which contribution or indemnification is sought. As a result, when a defendant/third-party plaintiff is insolvent, the plaintiff could seek to recover directly from the third-party defendant.

By way of further description, under current law, a worker who sustains a “grave injury”¹ in the course of employment may, in addition to filing a workers’ compensation claim against his or her employer, pursue a personal injury action against a negligent third-party (“Third-Party Action”). For example, when a construction worker sustains a grave injury in the course of employment, he or she may pursue a Third-Party Action against the owner of the premises. Further, in Third-Party Actions, the defendant may implead the plaintiff’s employer and claim that the employer is responsible for any damages awarded against the defendant. If the defendant/third-party plaintiff is successful in the claim for contribution or indemnification, the third-party defendant will be responsible for reimbursing amounts paid by the defendant/third-party plaintiff and its General Liability insurer, and that reimbursement will be made under Part II of the third-party defendant’s Workers’ Compensation and Employers’ Liability policy.²

Under the proposed law, when the judgment in a Third-Party Action exceeds the defendant/third-party plaintiff’s assets (including the policy limit of defendant/third-party plaintiff’s General Liability policy), plaintiff would be permitted to seek recovery of the unpaid portion of the judgment directly from the third-party defendant or its Workers’ Compensation and Employers’ Liability policy.

Loss Cost Analysis

To estimate the cost impact of this legislation, the Rating Board obtained data on pending claims that may be impacted and resolved claims that potentially could have been impacted.³ That information was used to estimate additional losses that would be paid out to injured workers in Third-Party Actions on an annual basis.

¹ “Grave injury” is defined in section 11 of the New York State Workers’ Compensation Law.

² Any such reimbursement would be less any workers’ compensation liens credited to the workers’ compensation insurer.

³ Members of the Rating Board submitted data voluntarily to facilitate this cost analysis.



Based on the data, and after considering (a) the anticipated upward pressure on settlement amounts that would likely result from this legislation, and (b) the impact on the incentives to settle claims, it is estimated that this legislation would result in an annual cost of \$150M.

While an additional \$150M in annual losses translates to an aggregate loss cost increase of 2.8%, the Rating Board's analysis confirms that most, if not all, of the claims affected by this legislation would be in the construction industry. Accordingly, construction classification codes, which represent approximately 25% of premiums in the workers' compensation system, will sustain an 11.2% increase in loss costs. The derivation of this increase is summarized in the table below.

Further, it bears mention that the legislation carries an immediate effective date and is applicable to all judgments entered by plaintiffs on or after such date. This effective date creates an unfunded liability on construction-related Workers' Compensation and Employers' Liability policies written prior to the approval and implementation of a loss cost level change that accounts for the additional costs that would result from this legislation.

Derivation of Estimated Cost Impact of S.6552 / A.2373 (2019)

System Costs / Description of Estimated Value	Amount	Source or Calculation
(1) Expected Pure Premium Per Year	\$5.3B	Rating Board Financial Data
(2) Percentage of Premium for Contractors	25.0%	Rating Board Unit Statistical Data
(3) Expected Pure Premium Per Year Contractors	\$1.325B	(1) x (2)
(4) Increased Costs Due to Legislation	\$150M	Estimate based on data submitted by insurers
(5) Direct Impact to Aggregate Loss Cost	2.8%	(4) / (1)
(6) Increase in Loss Costs for Contracting Classes	11.2%	(4) / (3)

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