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New York Enacts the AVOID Act: Major Changes to Third-Party Practice Under CPLR § 1007

Effective April 18, 2026, New York's Avoiding Vexatious Overuse of Impleading to Delay Act (the "AVOID Act") substantially rewrites the rules governing third-party practice under CPLR § 1007. For commercial litigators - and especially those handling construction and multi-party contract disputes - the statute represents a decisive shift away from discovery-driven impleader toward front-loaded risk-transfer decision-making.

The AVOID Act was enacted to curb the long-criticized practice of bringing late third-party actions that disrupt schedules, delay trials, and expand litigation after a case is trial-ready. In industries where indemnification and contribution claims are routine, the statute demands immediate strategic recalibration.

Accordingly, practitioners can expect this front-loading to shift cost and complexity to the early phases of litigation while reducing the risk of late-stage disruption.

What is Impleader Anyway?

Under New York law, impleader - also referred to as third-party practice - permits a defendant (the third-party plaintiff) to join additional parties to the action when that party may be liable to the defendant for all or part of the plaintiff's claim. Third-party claims commonly sound in indemnification, contribution, or breach of a duty owed to the defendant.

The purpose of impleader is to promote judicial efficiency by resolving related liability issues in a single proceeding, thereby minimizing duplicative litigation and the risk of inconsistent verdicts. Before enactment of the AVOID Act, New York's procedural framework imposed no fixed deadline for commencing third-party practice. Instead, courts retained broad discretion under CPLR § 1010 to permit or deny late impleader based on whether it would unduly delay the action or prejudice the existing parties.

Why This Matters in Commercial and Construction Cases

Commercial and construction litigation has historically relied heavily on impleader:

- Owners impleading construction managers and general contractors
- General Contractors impleading subcontractors and suppliers
- Defendants asserting contractual indemnity long after discovery clarified fault allocation

The AVOID Act sharply limits this long-standing playbook.

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The New Statutory Framework Under CPLR § 1007

1. Ninety-Day Impleader Deadline From the Answer

New CPLR § 1007(b) prohibits a defendant from filing a third-party summons and complaint more than 90 days after serving its answer unless it obtains an order from the court.

In practice, this means:

- Indemnity and contribution targets must be identified at the earliest stages of the case
- Waiting for depositions, site inspections, or expert disclosures before impleading is no longer viable
- Defendants who miss the deadline face mandatory severance or dismissal of the third-party action

For construction litigants, this places immediate pressure on early role allocation and contract review - particularly indemnification provisions in prime contracts, subcontracts, and purchase orders. This represents a drastic departure from the historic practice of awaiting forensic analysis and proof. Therefore, defendants can no longer wait for defect attribution to crystallize before impleading potentially responsible subcontractors, suppliers, designers, or consultants. Instead, general contractors and construction managers must assess all plausible defect-causing trades immediately after answering.

Similarly, the statute as amended will have a major impact on commercial construction cases involving warranty claims, professional negligence, or performance standards, which often implicate design professionals who are brought in late - sometimes after discovery reveals design-construction interface issues.

Under the AVOID Act, however, contractors and owners must evaluate potential design liability before expert discovery has even commenced. Late realization that defects stem from design - rather than means and methods - may not excuse untimely impleader. Although design professionals may see earlier involvement in litigation, the silver lining is that there will also be fewer late-stage impleader surprises.

Overall, this will likely lead to protective impleader - naming multiple downstream parties early to preserve indemnity and contribution rights. Courts, therefore, may see over-inclusive early third-party complaints, filed defensively to satisfy the new 90-day window.

Paramount under the amended framework is early document production and targeted initial disclosures to support or resist impleader applications within the new statutory window.

2. Impleader After Note of Issue Is Now the Exception

Under CPLR § 1007(c), third-party practice after the filing of a note of issue is barred absent a showing of good cause or that impleader is required in the interest of justice.

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This sharply curtails a common tactic in construction cases - waiting until the case nears trial before adding peripheral or downstream parties. Courts are now statutorily directed to prevent exactly that dilatory conduct.

3. Automatic Severance or Dismissal for Noncompliance

New CPLR § 1007(d) removes judicial flexibility, that is, third-party actions filed outside the statutory limits *must* be severed or dismissed without prejudice.

While dismissal is without prejudice, the practical effect may be severe. For instance, separate actions will likely increase litigation costs; discovery may become duplicative and inconsistent rulings and verdicts become more likely.

4. No Consolidation After Severance

Under CPLR § 1007(f), if a third-party action is severed and re-filed as a separate case, consolidation is prohibited. This is especially significant in complex construction disputes, where consolidation has traditionally been used to restore efficiency after severance. That safety valve no longer exists.

Applicability

The Legislature clarified that the AVOID Act applies only to actions commenced on or after April 18, 2026. Existing cases are not retroactively affected - but any new commercial or construction actions are fully subject to the statute.

Practical Takeaways for Commercial and Construction Litigators

The AVOID Act forces meaningful changes in litigation strategy:

- Early risk-transfer analysis is mandatory, not optional.
- Counsel must review contracts for risk transferring indemnity and insurance obligations before or immediately after answering
- Insurers and claims professionals must accelerate coverage, tender, and additional-insured analyses
- Discovery can no longer be relied upon to justify delayed impleader
- Tactical impleader as a delay mechanism is effectively eliminated
- Early impleader becomes a matter of preservation, not proof
- Failure to implead within 90 days may permanently fragment related claims into separate actions with no consolidation remedy

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Bottom Line

For commercial and construction disputes, the AVOID Act transforms CPLR § 1007 from a flexible procedural tool into a strictly regulated deadline statute. The statute rewards early diligence and punishes delay. Parties that fail to adapt risk losing the ability to litigate indemnity and contribution claims in the same forum - and on the same timeline - as the underlying action. In the context of construction defect, delay, and breach of contract litigation, the AVOID Act compresses years of traditional third-party strategy into the first few months of a case. Parties that fail to reassess impleader timing risk losing the ability to resolve fault allocation, indemnity, and contribution in a single coordinated proceeding.

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