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The New York Adult Survivors Act Passes: Bracing for the Impact on Institutional Liability and Insurance Coverage

“Revival” statute legislation passed this week by the New York Assembly places many companies at risk for significant liabilities from decades-old adult sexual misconduct and abuse claims, and insurance coverage will play a key role.

On May 23, 2022, almost a year after the revival window of the New York Child Victims Act (“CVA”) closed, the New York Assembly passed the Adult Survivors Act (“ASA”). Governor Kathy Hochul has said that she will sign the bill into law. The ASA works in much the same way as the CVA—it opens a one-year revival window for sex abuse survivors to bring previously time-barred claims against their abusers, and the institutions that either employed the abuser or the survivor and allegedly allowed for the abuse to happen. However, unlike the CVA, which opened the window only to survivors of child sexual abuse, the ASA opens the window to file suit for *all adult survivors* who were 18 or older at the time of abuse, even if the abuse occurred *decades ago*, and regardless of whether the survivor previously pursued a criminal or civil complaint at the time of the alleged abuse.

The ASA will likely have a significant impact on institutional liability and have a far greater reach than the CVA did. In contrast to the CVA, the ASA opens a revival window for a much larger subset of individuals, and thereby

a wider range of potential defendants. As a matter of comparison, the CVA resulted in lawsuits against a limited range of institutions who interacted with children on a regular basis, including churches, boys’ and girls’ clubs, schools, and camps. By the time the CVA window closed on August 13, 2021, nearly 10,000 lawsuits had been filed in New York, which likely will result in hundreds of millions, if not billions, of dollars in potential liability to the impacted institutions—and their insurance carriers. Indeed, some institutions have had to seek bankruptcy protection in response to CVA claims.

Potential defendants under the ASA will range from small businesses to *Fortune* 500s, universities to professional sports teams, and include all kinds of public-facing entities in between like hospitals, bars, restaurants, retailers, banks, and more. If the number of cases that were filed pursuant to the CVA is any harbinger, companies need to prepare for a potential flurry of similar cases brought by a much larger population of potential plaintiffs.

Defending sex abuse claims presents unique challenges and the complexity of insurance issues should not be underestimated in these cases. Critical to protecting a company from the financial impact of these cases is liability insurance. Institutions must know what type of coverage they have in place, when, and in what amounts. Insureds will likely have to deal with wide-ranging issues from locating historical policies, to dealing with insurance companies who may no longer be able to pay, to charting a settlement or defense strategy with which an insurance carrier disagrees, to pushing back against premature coverage defenses raised by the carriers who are wholesale avoiding having to pay claims. It is critical that insurance is not overlooked—risk managers should place these issues on par with the internal investigations that may be required once claims start to be filed, especially if there is any interest in an early settlement with claimants. Early missteps on coverage issues like notice, selection of defense counsel, and voluntary payments of law costs or settlement can threaten a company's ability to recover on their insurance altogether.

The CVA has not only set the stage for the ASA, but it will be used as a point of comparison once ASA cases begin to be filed, and as such the legal strategies utilized to maximize insurance coverage for CVA claims will prove critical to early and maximal insurance recovery for insureds facing ASA claims as well.

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