

NEW YORK

AVOID Act

CPLR 1007 Cheat Sheet & Litigation Guide

Updated for the 2026 chapter amendment
Effective April 18, 2026

THE OPERATIVE RULE

File the third-party summons and complaint within 90 days after serving the answer - or obtain a court order.

90

DAYS TO FILE

without a court order

20

DAYS TO SERVE

after filing

GOOD

CAUSE

or interest of justice after note of issue

NEW

ACTIONS

commenced on or after 4/18/26

The amendment matters

The February 2026 chapter amendment replaced the original 60/45/30/20-day tiers, removed retroactive application to pending cases, changed the employer exception from 120 to 90 days, and converted the post-note-of-issue bar into a motion standard.

Do not rely on summaries of the original enactment. This guide uses the statute now in effect.

A practical resource for New York litigators, claims professionals, insurers, risk managers, and trial counsel.

AVOID Act Cheat Sheet: Core Deadlines

The primary filing and service rules, displayed at a readable working size.

TRIGGER	ACTION / DEADLINE	PRACTICAL RULE
Answer served	File within 90 days	After Day 90, a court order is required. The statute measures from service of the answer, not its filing.
Third-party complaint filed	Serve within 20 days	Serve the third-party defendant with the third-party summons and complaint and all prior pleadings.
Papers issued for service	Serve plaintiff's counsel simultaneously	Send a copy of the third-party complaint to plaintiff's attorney when the papers are issued for service on the third-party defendant.
Note of issue filed	Move before filing	No third-party filing unless the court finds good cause or that filing is in the interest of justice.

The safest diary rule

Treat the date the answer was served as Day 0. Record the statutory Day 90 deadline, a target filing date no later than Day 75, and the separate 20-day service deadline immediately after filing.

AVOID Act Cheat Sheet: Exceptions & Applicability

Special triggers, date computation, and the amendment's limited reach.

TRIGGER	ACTION / DEADLINE	PRACTICAL RULE
Plaintiff's employer / grave injury	90 days after the later trigger	Without an order: 90 days after the later of employer identity becoming known or knowledge / constructive knowledge of grave injury.
Deadline falls on weekend or holiday	Next business day	Apply General Construction Law § 25-a. Calendar conservatively and verify court-closure rules.
Action commenced before 4/18/26	Amendment does not apply	The chapter amendment applies only to cases commenced on or after April 18, 2026.

Calendar conservatively

CPLR 2103 contains service-method additions when a period is measured from service by mail, overnight delivery, or electronic means. Because the 90-day period runs from a party's own service of its answer, confirm the computation rather than relying on an assumed extension. Build the working deadline from the earliest defensible date.

Internal controls - not statutory extensions

Complete the risk-transfer review by Day 45, obtain authority by Day 60, target filing by Day 75, and reserve Days 76-90 for corrections, service preparation, and e-filing problems.

What the 2026 Amendment Establishes

Seven operative rules organize third-party practice under amended CPLR 1007.

1 90 days

File within 90 days after serving the answer, unless the court orders otherwise.

2 20 days

After filing, serve the third-party defendant within a separate 20-day period.

3 Plaintiff copy

Serve plaintiff's attorney when the papers are issued for service.

4 Court leave

After Day 90, filing requires a court order; party consent is not enough.

5 Note of issue

After note of issue, show good cause or that filing is in the interest of justice.

6 Applicability

The amended statute applies to actions commenced on or after April 18, 2026.

SEVENTH RULE

Unauthorized filing may be severed or dismissed without prejudice. If a severed claim becomes a new action, CPLR 1007(f) bars consolidation.

Day 0 to Day 30: Control the File Early

The amended rule favors intake-driven investigation rather than waiting for depositions.

FILE CONTROL

Four first-month actions

- Verify the date and method by which the answer was served. Preserve the affidavit or NYSCEF proof.
- Confirm whether the action was commenced before or after April 18, 2026 and whether a note of issue is pending.
- Create the statutory Day 90 filing deadline and the separate 20-day service deadline immediately.
- Begin the contract, insurance, party, and evidence review at the same time - not sequentially.

INTERNAL CONTROLS

Diary dates

- Day 30 - first status review
- Day 45 - risk-transfer analysis
- Day 60 - authority request
- Day 75 - target filing
- Day 85 - final correction check
- Day 90 - order required after this point

SAFEST PRACTICE

Treat answer service as Day 0. Use Day 75 as the working filing target so the final 15 days remain available for entity verification, pleading correction, NYSCEF issues, and service preparation.

Build the Party Map and Proof Map

A reliable impleader decision connects each entity to a role, contract, theory, and supporting evidence.

WHO MAY BELONG IN THE ACTION

Party map

- Identify the owner, tenant, general contractor, construction manager, subcontractors, employer, vendors, and property managers.
- Record each entity's role, scope, contract, insurance, site presence, witnesses, potential fault, and viable third-party theory.
- Verify exact legal names, corporate status, service address, and Secretary of State information early.

WHAT SUPPORTS THE PLEADING

Proof map

- Collect incident reports, daily logs, photographs, video, permits, safety records, work tickets, inspections, and witness statements.
- Identify the evidence supporting each proposed claim. Do not name a party solely because it appears in a project directory.
- Issue preservation demands for surveillance, electronic logs, or project-management data that may be overwritten.

CLAIMS REPORTING LANGUAGE

The answer was served on [date], making [date] the conservative 90-day filing deadline. We are investigating [entities and theories], expect a pleading recommendation by [date], and will seek authority no later than [date].

Day 31 to Day 60: Decide the Theory

Resolve the legal basis and authority question before the file enters the final deadline window.

LEGAL THEORIES

Analyze each proposed claim

- Contractual indemnification and defense.
- Common-law indemnification and contribution.
- Breach of an insurance-procurement obligation.
- Additional-insured and coverage issues that may warrant a separate declaratory strategy.
- Whether the claim is contingent on defendant liability to plaintiff and therefore fits CPLR 1007.

AUTHORITY PATH

Reach a documented decision

- State which parties should be impleaded now and which presently lack a good-faith basis.
- Identify the missing proof and the date by which it must be obtained.
- Deliver the written recommendation before Day 60.
- Request authority early enough to permit review, revision, filing, and service.

LABOR LAW / CONSTRUCTION PROTOCOL

Chart the chain: Owner -> GC / CM -> Sub -> Sub-sub -> Employer -> Vendor. Separate grave-injury common-law claims from written-contract indemnity claims against the employer. Identify anti-subrogation and same-insurer conflicts before pleading, and notify primary and excess carriers of the statutory deadline.

Day 61 to Day 90: Draft, File, and Serve

Use verified entities, specific facts, and a documented service plan.

STAGE 1

Draft

- Use verified entity names.
- Plead the relationship and theory with specific facts.
- Attach or quote the operative contract where practice permits.
- Avoid a generic complaint against everyone in the chain.

STAGE 2

File

- Confirm the caption, fee, summons format, and NYSCEF party creation.
- File by the working target, preferably Day 75.
- Save the NYSCEF confirmation.
- Diary the separate 20-day service deadline immediately.

STAGE 3

Serve

- Serve the summons, complaint, and all prior pleadings within 20 days.
- Serve plaintiff's attorney when papers are issued for service.
- Track affidavits and cure defects before the period expires.
- Diary the third-party answer date.

AUTHORITY INSTRUCTION

Authorize filing against the entities supported by the present record, subject to amendment or discontinuance as discovery develops. Preservation does not excuse a pleading without a good-faith basis.

After Day 90: Motion for Leave

The amendment creates a leave requirement. A stipulation or claims-side agreement does not replace a court order.

OPENING

1. State the statutory gateway

Acknowledge that filing is no longer available as of right. Ask for leave and attach the proposed third-party summons and complaint.

TIMELINE

2. Give the court a precise chronology

Identify answer service, the investigation performed, discovery obtained, when the proposed claim became apparent, and why counsel acted promptly after learning the relevant facts.

SUBSTANCE

3. Establish merit and limited prejudice

Show a facially meritorious claim, explain why the delay was reasonable, and address whether the existing schedule can be protected without unfairness to the parties.

CASE MANAGEMENT

4. Offer a workable litigation plan

Address disclosure, motion practice, trial timing, and any alternative scheduling relief that would avoid unnecessary disruption.

MOTION-WRITING FOCUS

Lead with the statutory gateway, then tell a clean and chronological story: what was unknown, when it became known, what counsel did next, and how the court can protect the schedule.

Post-Note-of-Issue Strategy

The motion must demonstrate good cause or that impleader is in the interest of justice.

GOOD CAUSE / INTEREST OF JUSTICE

Threshold showing

- Explain why the third-party claim could not reasonably have been asserted earlier.
- Identify the new evidence, party information, or legal basis and when it became known.
- Demonstrate prompt action after discovery of the claim.
- Show that the proposed pleading has facial merit.

COURT MANAGEMENT

Trial-readiness analysis

- Address completed and remaining discovery.
- Identify any need for additional depositions, documents, or experts.
- Explain the effect on jury selection, trial length, and trial date.
- Evaluate whether severance is workable and what prejudice it would create.

PROVIDE A SOLUTION

Requested relief

- Ask for leave to file the attached pleading.
- Propose a targeted disclosure schedule where additional discovery is needed.
- Request alternative or coordinated relief that protects the main action schedule.
- Address severance directly rather than leaving the issue unanswered.

BEST PRESENTATION

The strongest motion is not merely an explanation for delay. It is a practical case-management proposal showing why the claim belongs in the action and how the court can permit it without derailing trial readiness.

Employer Exception and Severance

The special employer trigger and the severance provisions require separate analysis.

SPECIAL TIMING RULE

Plaintiff-employer exception

- Without an order, CPLR 1007(e) permits filing within 90 days after the later applicable trigger.
- Trigger 1: the date the employer identity becomes known.
- Trigger 2: the date the defendant or third-party defendant knows or should know that plaintiff sustained a grave injury.

WCL SECTION 11 DISTINCTION

Do not merge distinct theories

- Written-contract indemnity under Workers' Compensation Law section 11 is analytically distinct from grave injury.
- Do not postpone a known written-contract claim merely because the grave-injury exception may apply to a common-law claim.
- Evaluate contractual notice, tender, and insurance issues at the same time.

LITIGATION STRUCTURE

If filing is rejected, dismissed, or severed

- CPLR 1007(d) exposes an unauthorized filing to severance or dismissal without prejudice.
- Without prejudice does not guarantee a viable later claim. Evaluate accrual, limitations, preclusion, contractual notice, bankruptcy, and collectability.
- If a severed claim becomes a new action, CPLR 1007(f) bars consolidation.
- Budget for duplicate discovery, motion practice, expert costs, and inconsistent timing.

Applicability and File-Audit Decision Tree

The commencement date of the main action controls. Use the filing date under CPLR 304.

FIRST QUESTION

When was the main action commenced?

EARLIER ACTION

Before April 18, 2026

The amended AVOID Act does not apply. Analyze impleader under the CPLR 1007 framework applicable to the action and the governing scheduling and severance law.

COVERED ACTION

On or after April 18, 2026

The amended CPLR 1007 applies. Identify the answer-service date, calculate Day 90, and create the separate 20-day service deadline.

MANDATORY FILE DATA

Audit fields for every assignment

- Action commencement date; answer service date and method; conservative Day 90 date.
- Note-of-issue status and anticipated filing date.
- Potential third parties and legal theories.
- Contracts, policies, and proof still outstanding.
- Authority deadline, responsible lawyer, target filing date, and service date.

CORE POINT

The AVOID Act controls the timing and structure of impleader. It does not, by itself, decide accrual, limitations, contractual defenses, or the ultimate merits of an indemnity or contribution claim.

Claims-Professional Control Sheet

Use these prompts in status reports, file reviews, and defense-counsel follow-ups.

FILE REVIEW

Questions for defense counsel

- What is the verified answer-service date and conservative Day 90 deadline?
- Which entities may owe indemnity, contribution, defense, insurance procurement, or additional-insured coverage?
- What documents are missing, who requested them, and when is the follow-up?
- Which parties should be impleaded now, and which lack a good-faith basis?
- When will the proposed pleading and authority request be delivered?
- Has the note of issue been filed or scheduled?

FINANCIAL IMPACT

Reserve and exposure implications

- Additional defense counsel and appearance costs.
- Motion expense where leave is required.
- Potential severance and duplicate litigation.
- Longer tail for contribution or indemnity recovery.
- Coverage disputes involving tenders, priority, and anti-subrogation.
- Collectability and settlement-timing risk.

SUGGESTED STATUS-REPORT BLOCK

AVOID Act Status: The action was commenced on [date] and the answer was served on [date] by [method]. The conservative filing deadline is [date]. Potential claims exist against [entities] based on [theories]. We have obtained [documents] and are awaiting [documents]. Filing is recommended / not recommended because [reason]. Authority is requested by [date].

ESCALATE IMMEDIATELY

Day 60 with no written analysis; Day 75 with contracts outstanding; Day 85 with no finalized pleading; unknown employer; imminent note of issue; or tender discussions being used to delay filing.

Primary Authorities

Official New York sources. Each authority below is hyperlinked.

CPLR 1007

Current filing, service, note-of-issue, employer, severance, and consolidation rules.

2026 Chapter Amendment

S.8809 / Chapter 79 of 2026; establishes the operative amended structure.

CPLR 1008

Rights, defenses, and procedural position of the third-party defendant.

Workers' Compensation Law section 11

Grave injury and written-contract indemnification involving the plaintiff's employer.

CPLR 2103

Service-method timing provisions to check when computing a period measured from service.

General Construction Law section 25-a

Next-business-day rule when a period ends on a weekend or public holiday.

FIVE RULES TO REMEMBER

90 days from service of the answer. 20 days to serve after filing. Court leave after Day 90. Good cause or interest of justice after note of issue. The amendment applies only to actions commenced on or after April 18, 2026.

About Matthew S. Lerner

New York appellate, motion, trial-strategy, and preservation counsel.

PROFESSIONAL PROFILE

Appellate Attorney | Complex Motion Writer | Trial Strategy Counsel

Matthew S. Lerner assists insurers, claims professionals, businesses, and litigants with high-exposure civil appeals, dispositive motions, trial monitoring, record preservation, risk-transfer disputes, and New York Labor Law litigation. His work focuses on clear analysis, practical litigation strategy, and preserving issues before they become appellate problems.

CONTACT & PRACTICAL ANALYSIS

Matthew S. Lerner

New York Civil Law

mlerner@gerberciano.com

(518) 901-2141

nycivillaw.blog

IMPORTANT NOTICE

Disclaimer and attorney advertising

This guide is a general educational resource and is not legal advice. It does not create an attorney-client relationship, address every court rule or factual variation, or replace independent deadline calculation. Statutes, court rules, case law, and electronic-filing procedures may change. Confirm all dates and legal conclusions with counsel using the official authorities and the facts of the particular action. Prior results do not guarantee a similar outcome. This material may constitute attorney advertising.