



Lowenstein Sandler's In the Know Series Video 5 – Five Tips to Improve Your Insurance Coverage Claim

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Eric Jesse:

Hi, I'm Eric Jesse, partner in Lowenstein Sandler's Insurance Recovery Group, and welcome to "In the Know."

So when businesses face even the potential of an investigation, a claim, a lawsuit—insurance cannot be on the back burner. Instead, companies should be proactive to really just try to understand how their policies may respond and what policy requirements exist so that they are ready if and when a claim comes.

Today, we're going to discuss five simple but often overlooked steps that can improve a company's likelihood and amount of insurance recovery if and when that claim is made.

So first, though this may seem obvious when an issue arises that might turn into a claim, policyholders should proceed eyes wide open.

They should understand the scope of coverage that might be available and what defenses the insurer might try to invoke. By doing this, companies can understand their potential exposure and protection. And this exercise is also helpful so that they are prepared to carefully characterize anticipated claims in ways that can fall within the policies coverage, and so that they avoid talking about claims in ways that walk into exclusions.

Second, depending on the state law that applies, late notice of a claim can be fatal to coverage. So companies need to review their policies to understand the notice and timing requirements again so they're ready to go once a claim is made.

Some policies also identify which corporate officers are required to know about a claim before the notice obligation begins. And by doing this review, companies can learn if they're able to take advantage of what's called a Notice of Circumstance Provision that might be in their policy.

This type of provision allows companies to notify their insurers of potential claims, that is circumstances that could give rise to a claim, so that they're able to lock in that policy for coverage and that it applies even if the claim comes years later.

Third, and this is critical: required notices should be provided to all insurers in the tower, both primary and excess. Even though an excess policy might follow form to the primary policy, which means that the access policy incorporates the primary policy's terms and conditions, excess carriers are going to expect to receive their own notices. Failure to provide notice to an excess carrier is going to lead them to try and assert a late notice defense, which as a policyholder, you'll want to avoid.

Fourth, companies need to understand who their lawyer can be. Oftentimes, companies are surprised when they hire a law firm to defend a claim, only to find out that their policy requires hiring defense counsel from a pre-approved panel of firms. Or they're surprised that the insurer will only pay rates that are lower than what the policyholder's preferred counsel charges. So preferred counsel and rates are something that companies can try to negotiate with their insurers when the policy is being placed. It's important to have these discussions upfront as retaining counsel and incurring large legal costs without insurer approval can lead to greater out-of-pocket costs for the policyholder.

And finally, at the end of the day, properly communicating with the insurers is key. Whether it's properly framing a notice of circumstance or claim notice; whether it's communication when the insurer when insurer consent is required; whether it's communication over defense counsel selection or rates or litigation guidelines, or just providing updates on the claim, communication with the insurer is critical to help avoiding a lot of headaches later on if and when insurance dollars—whether it's for defense or a settlement—are requested.

So thank you for joining us, and we look forward to seeing you next time on ["In the Know."](#)