



**Lowenstein Sandler's Insurance Recovery Podcast:
Don't Take No For An Answer**

Episode 60

**A Day In the Life Of An Insurance Broker
When the Building Is On Fire**

By [Lynda Bennett](#), Matthew Kerman

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Lynda Bennett: Welcome to Don't Take No for an Answer, I'm your host, Lynda Bennett, Chair of the Insurance Recovery Practice here at Lowenstein Sandler. And today, I am pleased to welcome Matt Kerman, who is Vice President Financial Line Specialist with ARC Excess & Surplus. So Matt, thanks for joining us today.

Matthew Kerman: Lynda, thanks so much for having me.

Lynda Bennett: Pleasure. All right. Well, for the benefit of our listeners I'll say that you and I have worked together on a number of matters over the years, and it's been my pleasure to do so because Matt is knowledgeable, responsive, resourceful, oh yeah and he happens to be an excellent person that I've enjoyed getting to know. In today's episode, I want to take a deep dive into Matt's resourcefulness and why I have learned time and time again that it's crucial for me to have someone like Matt on my speed dial. You see, I'm that person who likes to call Matt often late on a Friday night or first thing Saturday morning or even more recently, the day before Thanksgiving with a major emergency where my client has found itself up against the wall and their current brokers thrown up their hands.

Most often we're talking about a client that has experienced a significant claim during the current policy or they may be in an industry, whether the insurers have decided they want to get out stat and the client's insurance policies are about to expire. The incumbent brokers shop the market and has come up empty delivering surprising and certainly unwelcome news that the current policies will not be renewed and the client's out of luck. Each time I've sent up the bat signal to my friend Matt, he jumps in with both feet and he's found an insurance solution. And each time I was amazed not only by his ability to get coverage in place, but also by how quickly he can get it done

with efficiency and putting up with my constant demands, "Hey Matt, you got to do better on price and terms, you know that."

So, today I thought it would be valuable to have Matt share at least some of his secret sauce with us so that clients and prospects who find themselves in similar binds will know who to call and what they can do to streamline the process while the fire alarms are ringing, and smoke is filling in the room of this coverage emergency. So Matt, I kind of built you up quite a bit. Tell us about the hype, what's your background and why are you the superhero that I've just explained that you are?

Matthew Kerman: Well, thanks again for having me on. I work for ARC Excess & Surplus who is a boutique specialist in the management and professional liability world. I in my past life, in my onset of my insurance career I was an underwriter, so I started on the other side of the aisle. Now, this past experience as an underwriter allows me to understand how underwriters think and act and transact in situations which transitions really well on the broker side when advocating for clients.

Lynda Bennett: So, what you're telling us, Matt I think is that how the sausage is made. I like that, I really like that and that obviously is why you're so good at what you do. Well, I thought it would be fun in this episode to deal with a hypothetical claim scenario so I'm going to set the proverbial table. It's Christmas Eve and you're about to sit down to dinner with your family and I give you a call, I send up the bat signal and I give you a call and I advise you that my client has a \$50 million tower of a D&O coverage that expires of course on New Year's Eve.

The client's been told by their current broker that the current insurers are not going to renew the policies and the broker has hit a wall in terms of getting alternative coverage options in place. So, my first question to you Matt is, what do you need to know as you're walking away from the Christmas Eve dinner table, what are the things you need to know to get rolling on this problem for me?

Matthew Kerman: For one, my family really is extremely used to that walking away from the table is not an anomaly or a one-off situation. So, some of the things in a situation when an insured's back is against the wall is we need to have an understanding of why they're in this situation. A summary of the claim or of the financial condition of why insured's current insurers are not willing to renew their policy is I think the utmost important aspect to create a roadmap of how we're going to execute this solution. The next-

Lynda Bennett: So, you need to know why the buildings on fire basically.

Matthew Kerman: That's exactly right so that's going to be essential. The other items that are needed are more of a typical for any sort of procurement of insurance and that's going to be the renewal application, that's going to be the insurance financials, if there was a claim situation of why the current insurers are not willing to renew, a summary of that situation as well as lessons learned from the claim scenario. Carriers want to have a comfort level that, or this might have been a bad incident in the past but it's not going to happen again. And

these lessons learned are instrumental in getting underwriters and insurance companies comfortable with writing a tougher to place placement.

Lynda Bennett: Well, that's great. And so, what do you do when the annoying lawyer wants to be the lawyer to say, "Yeah, I'm not giving you my privileged information about this claim." How do you get around that roadblock as you have to start smiling and dialing to get this coverage in place before year-end?

Matthew Kerman: Well, us and underwriters they don't need privileged information, they need a very watered-down basis summary of what happened. So, we're not asking for anything that's privileged or confidential, just a very, very brief summary of what occurred is sufficient in securing coverage on a go forward basis.

Lynda Bennett: Yeah and I think you made a great point that that lesson learned piece because when the new carriers are thinking about this, they know they're not going to be stuck with that claim. They're wanting peace and comfort that the client has learned from that prior claim that another carrier's going to have to respond to, but they want to know that this is a good risk and that somebody is going to develop the best practice to avoid the next claim from being asserted, right? All right. So, do you need to have copies of the expiring policies to get out up and running or is that not something that really needs to be in the package that goes out to the new carriers you're going to approach?

Matthew Kerman: So, in our process of placing a replacement go forward policy, the expiring policies are important for our review to ensure there's no gap in coverage. So, although we're not sending those policies out to the market to the other insurers, for our understanding of what currently is covered, who is currently covered, the dates that are currently being provided by the policy are important to ensure that we're not missing anything and that we continue to keep continuity for the insured.

Lynda Bennett: Great. Now, what about the application process? Because in this claim scenario, the client has already been engaged in the underwriting process for 60, 90 days before they get this unwelcome surprise at the bitter end, they've gone through the process of filling out an application, are you able to take that application that didn't sing when the other broker was using it and repurpose it for you or do we have to start over and complete a new and separate application to be able to get you out and running in the new markets?

Matthew Kerman: One nice thing about the professional management liability marketplace is underwriters are able to underwrite off of other carriers' applications, so that current application that the insured filled out and probably spent quite a bit of time filling out is the application that we could use to procure the new policy. So, the insured doesn't need to go out and rush to complete a full complete new application, the application that was completed in the past is totally fine.

Lynda Bennett: So, that's great and I guess at this point Matt, I am duty-bound to talk about another place where you and I become frenemies, which is when you use that old application the next thing you're going to tell me is that you're going to want a warranty letter from my client, which I don't like to give, but can you

talk about that requirement and why that's so important when we're going to new insurers?

Matthew Kerman: Sure. And that requirement in professional liability is needed when you're placing a director's and officer's liability policy to say that requirement of a warranty, we would also not allow our insureds to assign a warranty and it's really important to keep continuity of coverage and by an insured signing that warranty would break continuity. So, just by the nuances of management and professional liability world of what underwriters require, directors and officers, underwriters might ask for a warranty but that's not something that we would allow the insured to sign either.

Lynda Bennett: Great. I want to talk a little bit about, I mentioned at the top here, there's really two scenarios that I see where the bat signal has to be sent up. One is, and we just talked about it a little bit, that claim scenario. So, the incumbent insurers are a little spooked or they don't like the risk anymore, they want to get out. The other context that I've seen this come up is there are certain industries that the insurers are excited to be in and then they're less excited to be in. And I'll give an example, a generic example as cannabis. The last couple of years we've had some clients that got into these types of emergencies, not because they had any claims but because the particular carrier, they were with wasn't as excited to be ensuring in that industry. So, what are the kinds of things that you do for these, I call them harder to place risks? What are you doing to get those insureds protected?

Matthew Kerman: Yeah, there's definitely classes of business, as you mentioned, cannabis and others like cryptocurrency, firearms, adult entertainment of classes of business that the wider breadth of underwriters and insurers do not have an appetite to write. But our deep understanding of just doing management and professional liability lends to our understanding of who is able to write what class of business and allows us to be laser focused in our marketing efforts of insureds in those classes of business. We're able to pick up the phone and or send an email to underwriters that we do know have an appetite to write tough class of business.

Lynda Bennett: I actually want to give a plug to you and your team because one of the things is a lot of times those insurers are newer players, they're not known quantity name brand insurers necessarily that are in that space. And so, we really are working hand in glove with ARC to understand what is the management team like. You know Matt, my focus from when we're placing the policy is, all right but how are they going to be on claims? And so, being able to guide our clients in that way and being able to leverage the very good relationships that you and your colleagues at ARC have on the front end of that placement to let our clients feel comfortable is really super-duper important, especially on those harder to place risks.

So, let's talk about though again, we're at the stroke of midnight, the carriers may feel like they have our clients over the barrel because the clock is running very quickly to midnight, and they need to get coverage in place and not have gaps. So, what are some of the more restrictive terms that the carriers are going to be looking for on one of these last-minute placements

and what are some of the things that you do to manage around those more restrictive terms?

Matthew Kerman: Some of the areas of tools that underwriters try and employ when trying to write a tougher to place account in the very last minute are a Prior Acts exclusion, a specific matter or litigation exclusion, a specific individual exclusion. So, these are all things that underwriters might try and use, and we have to use our advocacy tools and things that we have in our back pocket to try and relieve underwriters' concerns from using that. Those are examples of things that underwriters would do in this situation.

Lynda Bennett: Well, and I think that's where you and I are pretty good tag team partners because you don't have to be the bad guy. I get to be the bad guy and you get to say, "Oh, this pain in the neck coverage lawyer is riding me on these terms guys, I got to get this exclusion out of here or the wording narrowed." I think we make a pretty good tag team on that stuff, Matt.

Matthew Kerman: We absolutely do.

Lynda Bennett: And I do want to pause because one of the trends that I've seen more recently when folks use brokers maybe other than ARC and they're doing some of these last-minute placements and you mentioned it and that's getting full Prior Acts coverage. People need to understand what these claims made policies, especially when you're making a move over to a new insurer, you've got to make sure that the new policy is going to provide you with full Prior Acts coverage, meaning the act may have happened two years ago but it's still subject to coverage for the policy that's going to be put in place.

And while Matt and his friends at ARC are very well aware of that, I can tell you from personal experience, not all brokers are focused on that, and we find out about it when a claim gets presented and our clients are extremely unhappy to learn that there's no coverage for that. So Matt, before we wrap up, I want to have you address some of the best practices that you would suggest to our clients. What should they be doing so that they can avoid these five alarm fire drills in the first place that we've been talking about?

Matthew Kerman: So, I think time is extremely important in partnering with an experienced knowledgeable broker like ARC is extremely important. One of the tools that we like to use is in-person underwriting meetings for insureds that allows underwriters to get a personal relationship with their insured. And we find that that pays a lot of dividends in executing the best result for a client. So, time is one of the most important items of partnering with a broker early in the process.

Lynda Bennett: I'll add to that and again, speaking from personal experience of when I have to pick up the bat phone to call you, clients really need to be super careful and super focused on when is their renewal period. The professionals at ARC know this process starts 60 to 90 days before the policies are about to expire. And it really will behoove you if you're responsible for the renewal in your company to make sure you're staying on top of those deadlines.

And that if you haven't heard from your broker and you're 30 days out and you don't have proposals and you don't know where the broker's been and what the response from carriers has been, you better pick up the phone and call my friend Matt so that you don't have to bother him when he is sitting at the dinner table on Christmas Eve.

Well, listen Matt, I really appreciate you joining us today, you shared lots of knowledge. I think everyone's going to know why they need to put you in their Rolodex for that speed dial phone call and we'll love to have you back next time so thanks for joining us today.

Matthew Kerman: Thanks again for having me, Lynda. I really appreciate it.

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