



Lowenstein Sandler's In the Know Series Video 17 – Policyholder Beware: Insured-Insurer Communications May Not Be Privileged

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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](#)."

Policyholders faced with third-party claims often assume that communications with their insurers are protected from discovery by the attorney-client or common interest privileges. However, the scope of these privileges are often more nuanced than companies expect, and they can depend on the applicable state law. Today, we will discuss three best practices that policyholders should follow when responding to information requests from insurers.

First, a common interest privilege among defense counsel, the insured, and the insurer will not necessarily apply to policyholder communications with an insurer that has denied coverage, and typically will not apply before an insurer has acknowledged a defense obligation. Policyholders should carefully consider the nature of any privileged documents or information before sharing them with an insurer, particularly when that insurer has requested information before taking a coverage position.

Second, policyholders should consider entering into a joint defense and common interest agreement with a defending insurer before sharing privileged information. Many jurisdictions take a narrow view of the attorney-client privilege and common interest doctrine, and will evaluate the nature and purpose of each communication, even if the insurer is defending under a reservation of rights. Because an insurer and its insured share an interest in preventing the discovery of privileged information, both are well-served by memorializing their intent to use that information only for joint defense purposes.

Third, when in doubt, pause. When faced with a new claim or lawsuit, policyholders may be inclined to quickly respond to each and every request from their insurer in order to expedite a coverage determination. However, once an applicable privilege or immunity has been waived, it may not be able to be reestablished. Policyholders are better served by taking the time to evaluate each request and, when necessary, retaining coverage counsel before responding to insurer information requests.

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