



Lowenstein Sandler's In the Know Series Video 29 – Bad Faith, Big Consequences: When Insurers Cross the Line

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APRIL 2025

Alexander B. Corson:

Hi, I'm Alex Corson, associate in Lowenstein Sandler's [Insurance Recovery Group](#). Welcome to "[In The Know](#)."

Today we're going to discuss the meaning of bad faith in the context of insurance claims handling.

Implicit in every insurance policy is the duty of good faith and fair dealing. As a matter of contract law, this means no party shall do anything that would undermine the purpose of their agreement.

Courts recognize that this flexible standard has no prescribed meaning and depends heavily on context.

In the insurance context, certain fact patterns may be more likely to give rise to bad faith claims than others.

- **First**, insurance companies have a duty to settle claims. When faced with a third-party demand that is within the available policy limits, an insurer might prefer to hold out for a better result so that they have to pay less under the policy. However, it is now well settled that an insurance company may not place its own financial interests above that of its insured, and an insurer's failure to resolve a claim within the policy limits may ultimately result in liability above that policy limit, including the entirety of any excess verdict caused by their failure to settle.
- **Second**, insurance companies have a duty to investigate. Both courts and state legislative bodies have made clear that when presented with a claim, insurance companies must diligently seek to understand the relevant facts and circumstances underlying that claim. Insurance companies must timely inform their insureds of potential policy terms or exclusions that would impact coverage and may not delay by issuing repetitive requests for duplicative, irrelevant, or unnecessary information.

An insurer that engages in bad faith delay tactics may ultimately be liable for consequential damages above their policy limits, and they may waive their right to assert coverage defenses that the thorough investigation they should have conducted would have uncovered at the outset.

- **Third**, insurance companies must deal fairly with their insureds. Insurers may not take coverage positions that are unreasonable or would undermine their policyholders' reasonable expectations to coverage.

When an insurer chooses to take a hyper-aggressive coverage position or uses the judicial system to place pressure on their insured, courts may hold that insurer liable for consequential damages above the limits of the policy.

For example, in some states, insurers that cast their policyholder in a defensive posture by filing preemptive strike coverage litigation may ultimately be responsible for the entirety of their insurance court costs, and attorney's fees if they don't prevail.

We hope this episode is helpful to policyholders wondering if their insurers' conduct rises to the level of bad faith.

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