



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

**Episode 42
Still Looking: How to Find Those Missing Policies
Covering Long Tail Liabilities**

By [Lynda A. Bennett](#), [Brian Della Torre](#)
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Lynda Bennett: Welcome back 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 we're picking up in our series talking about missing policies. In our last episode, my colleague, Bill Denver, and I discussed the issue of missing policies from a legal perspective. Why does it matter? How does it relate to allocation issues and what is the burden of proof that the court will apply to establish the existence of a missing policy? In today's episode, I'm pleased to welcome a true expert in the field of how to reconstruct missing policies. I've got with me today, Brian Della Torre, who is the vice president of the Insurance Archeology Group. So Brian, welcome and thanks for joining us today.

Brian Della Torre: Thanks so much for having me; a pleasure to be here and to be able to join the podcast.

Lynda Bennett: All right, great. So let's jump in. Why don't you tell me a little bit about your background and how one becomes an insurance archeologist. I bet you didn't go to college for that.

Brian Della Torre: Well, the old joke at every insurance conference is that the best icebreakers to ask somebody what they wanted to do before they went into insurance. And that of course holds true for most of us in the industry. Yes, my background's in the social sciences. I always enjoyed doing research. And about 19 years ago, I took a job at an insurance archeology group starting to do this. The job involves a lot of curiosity. We work for a lot of different industries and with people in all different groups within that company. So the treasury department, the legal departments, records management departments, all sorts of different people in different places. So it's certainly a job that involves a lot of curiosity, a lot of research and a wide range of industries and companies.

Lynda Bennett: So, I'm sure like most of us, you also got your start in looking at this through the lens of environmental and asbestos claims, right? Because you said you've been doing this roughly 19 years and those were the types of claims

back in the day when my clients were looking for missing policies. But why don't you just walk us through, in addition to asbestos and environmental, what are the types of claims that you're dealing with, where clients need your services to find those old insurance policies?

Brian Della Torre: Yeah. So there's certainly a great degree of work that's still environmental. There's traditional Superfund and state regulation. In the State of New Jersey, of course, we have environmental studies where the property is sold; and, being born and bred in New Jersey, I can safely say that if you dig a hole in New Jersey, you're going to find something. But then, of course, in environmental also we see the emerging PFASs and the coal ash claims, and asbestos continues. Asbestos continues to emerge, which industries are being hit. We've seen some of the makeup and cosmetics industries now being affected. And we see the trend from manufacturers into distributors as far as asbestos.

Brian Della Torre: And then of course in the last few years in New York and New Jersey, but certainly across the country as well, we've seen the Child Victims Act Claims, which have to do with sexual abuse of children in earlier time periods. And what all these claims have in common, as I'm sure you touched on your last episode, is these are claims that involve an incident or an occurrence from many years ago that you're being sued for today. And so insurance archeology is all about trying to reconstruct your past insurance coverage. And that's what we go in and do: we help organizations from Fortune 100 companies to dry cleaners and from churches and synagogues to school boards and municipalities and everybody in between with all of these different issues.

Lynda Bennett: Right. Well said. So these claims are involving what we insurance geeks like to call long tail claims. So we've either got property damage or bodily injury that has taken place quite a long time ago, but these policies will respond— if you can find them— to the bodily injury or property damage, as long as it happened while the policy was in effect. So, the first thing, Brian, that my clients ask me about when I raise the concept of insurance archeology, and I'll share with you, they all say, "Wait, there's somebody that actually does this?" The first question they really have is, "Well, how do we go about starting this process? We don't have a lot of our old records." And I assure them that people like you, Brian are magicians and you have ways to get into records that don't naturally pop to mind, that actually become a treasure trove of starting the process of reconstruction. So why don't you give our listeners a little insight into where do you look, what are the kinds of things that you're looking for to start that process, to reconstruct the program?

Brian Della Torre: Yeah, I mean, Lynda, you're absolutely right. I have very few clients that ever call and say, "We have a bunch of records and we just want to hire you to go through them." Most clients are going to come to us and say, "We've already looked and we have nothing." And the answer to that is twofold. So the first part of that answer is that records are often in basements and attics and tucked away in places, especially when we're talking about records from the 1960s or 70s or 80s. They're often tucked away to places where decision makers frankly, don't spend a lot of their time. And I spend a lot of my time in those places: in attics and basements. I was just in a jail for a municipality or

a county government that had put its records in the former jail. So, these are the places these things can be found.

Brian Della Torre: So some of it is about that. And some of it's about walking around facilities and exploring places that people think they know where things are. I just found an entire box of insurance policies for a school district in a closet that I was assured had only records from the 2000s. And we went in there because I never take no for an answer. And we went in and we found a box that said is 1960s ACCT meaning accounting. We pulled it out and it had probably a hundred million dollars' worth of insurance policies in it, typically dating-

Lynda Bennett: Thank God for pack rats.

Brian Della Torre: ... Yeah, dating back to the 1950s. These things happen. But then also part of it is things like many larger corporations are going to have records in Iron Mountain, or they're going to have them in record systems. The boxes from that period, the information may not have been transferred into an Iron Mountain system. So the box is listed without a description, or there's an old index that the longtime administrative person has in his or her desk, and you're able to cross reference that to the Iron Mountain index and then start to identify where boxes are, or department ID codes that allow you to identify groups of records that might be pertinent. So it's a combination of all those things, as well as there are formal archives in some instances that have records. Either that's because it's a local business or because it's a local government or a local religious organization, they may have a formal archive, and those are also places that we can go to look.

Brian Della Torre: So the one answer is there are records all over the place sometimes, actually in the filing cabinet, right outside our client's door. In the back of the filing cabinet, there's a folder. Certainly has happened before. So that's the one part of the answer. And then the second part of the answer is that insurance information is found in a wide range of records. So records related to the purchase of insurance, like canceled checks, accounts payable files, general ledgers. Sometimes those are on a computer. Sometimes they're in a Bob Cratchit handwritten ledger somewhere with a bound cover. Budgets, accounting statements can all have insurance information. And then in addition, insurance information can be found in things like in records related to claims. And so those claims can range from a trip and fall, a fur coat that got destroyed, a major products claim, an environmental claim 40 years ago that the person there has no idea occurred in the mid-1980s. So there's a wide range of what those look like as well. And those files obviously often have insurance information.

Brian Della Torre: And then finally many companies send certificates of insurance. And they may send them to a customer or they may send them to a regulatory authority. We've gone through job files for many clients and found them in the files because they would go on site to install a product. Government contracts, especially military ones or large institutional clients, there's more likelihood that there's a certificate of insurance. So that's always also a possibility. And of course, with certificates, you're also talking real estate. So mortgages, leases, loans. In New Jersey, the Economic Development Authority retains records that include certificates of insurance for companies

that had loans. So those are sort of the three categories: the purchase, the claims, and then places you're sending a certificate.

Lynda Bennett: Right. Yeah. I think also just to add to your list of thinking broadly, some of our clients have actually backed into this because they apply for grants. Any place that you're being asked to provide proof of insurance and those folks can retain records a lot longer than sometimes our clients do, and so I think it's a great point for you to drive home that our clients look in the quote, unquote, typical places, but on a search like this, they've really got to think broadly.

Lynda Bennett: I want you to just spend the minute though, touching on another tremendous value-add that I've enjoyed in using IAG's services over the years and that is the library of forms that you maintain. So in our last episode, we informed our listeners that as little as one piece of paper may be enough to springboard you into starting to gather the information to prove to the court that a policy was issued. And that's, I think another way that IAG is really valuable because over all the years that you've been doing this, you've got a pretty extensive library of forms. So just touch on that for a minute, if you can.

Brian Della Torre: Yeah, absolutely. And the one piece of paper thing is just so important in these searches. And literally one piece of paper can be millions of dollars. And we have numerous examples of that, where one document identified has a reline with a policy number in it and it leads to coverage. And yes, of course, sample forms, sample policy forms are an important piece as you move through the process, if a carrier's unable to find a copy of the policy and there're questions about the terms and the conditions. We have a collection of forms that we've gathered and/or we also have access to client records can then get permission from a client redact that policy to be used. Policies were often issued on standardized forms and they also, the prefix code was often pre-printed on the form. So it can provide a very good idea of what the terms and the conditions of the policy were. And of course, that's very helpful for you guys when you get to the point of trying to settle or litigate coverage issues.

Lynda Bennett: All right, Brian, so you just mentioned that one piece of paper can be enough. What happens when that one piece of paper doesn't appear? What are some outside sources that can be considered to continue the reconstruction effort?

Brian Della Torre: Yeah. So that's a great question, Lynda. The outside sources are often a potential place where information could be found. Often the records that are located can help to identify them. So brokers, outside counsel. Those things might be identified in records. They also could be identified through interviews. People who have been gone from the company for a long time, they have vivid recollections of some of the institutions they used. And while brokers have gone through a lot of transitions, brokers are a tremendously valuable source of policy information when they do retain them. Outside counsel or defense counsel can be a very valuable source of information. And then of course court records are another potential source in tracking down the litigation and trying to find insurance information there.

Lynda Bennett: Yeah. I mean, in my experience Brian, when I go to brokers they've all had a flood or a fire, but I guess maybe you have better luck with your outside sources there, but definitely worth a look.

Brian Della Torre: We just had one. We just had one, so it does happen. And it's a big hit when it happens, right?

Lynda Bennett: Absolutely.

Brian Della Torre: So it's always worked even though you're right that many have purged records.

Lynda Bennett: Well, and one other thing that I'll add, another outside source is the insurance companies themselves, because we've certainly worked with Brian and your team where we get that one piece of paper and that's enough to go back to the insurance company. And suddenly they find not only additional evidence of that one policy that was referenced on that one piece of paper, but they find six or seven other policies that were also issued to that policy holder. So it is crucially important to run down all of those outside sources. And let's not forget the insurance companies, because they certainly had record of the policy at one time or another and can certainly find additional evidence themselves when you give them a few more leads to work with. So many of our listeners, Brian, are wondering, what does it cost to engage an insurance super sleuth like you to aid in those policy search efforts?

Brian Della Torre: Yeah. Each project's unique. As I mentioned, we work for a lot of different industries. Some clients are looking for decades of coverage. Some are looking for a couple of years of coverage. We always have a conversation with clients to identify what they've already done, what they've already identified. And then we put together a budget proposal. We bill on a time and expense basis, a phase. We usually put our proposals in phases. Our phase one, usually in the 10 to \$15,000 range. And that's going to depend largely on what the client needs.

Brian Della Torre: It might be going through an attic. It might be going through an Iron Mountain database. It might be calling brokers and outside counsel cause they had a fire or a flood, and conducting interviews. It just really depends on what the client needs, but it's going to be the things that we think have the best chance of results for the most efficient cost. And then building from there, there may be other things identified and we provide budgets and recommendations and everyone's already participated, so they understand kind of where we are and what those next steps are and can make decisions about whether to invest more and searching deeper.

Lynda Bennett: Yeah, I think that's one of the things our clients have appreciated most in working with your company is that the initial investment isn't so significant. And if it turns up nothing, nothing ventured, nothing gained. But most times you're able to find a couple of threads to start working with that make that initial 10 to \$15,000 investment well worth the money. So that's great. We're just about to wrap up here, but I have to know: what's the very coolest find that you've ever been a part of. Brian?

Brain Della Torre: So it's hard to say. I'll walk you through a couple recent, one being during the pandemic, we were unable to travel. It was illegal of course, in the spring of 2020 to travel. We were actually able to partner with a client who was able to look through records using FaceTime and things like that. That led to some insurance records for an old environmental claim, which in turn led us to brokers and carriers. And we were actually able to reconstruct an entire insurance program from our office, which was really incredible. And it was an incredible success for them.

Brain Della Torre: Another that comes to mind is a client that we found a single piece of paper. It was a religious order. They had nothing to do with warehouses, but someone had gifted them a warehouse when they died. They inherited it. And of course, while they owned this warehouse, an accident occurred and the roof collapsed, damaging a third party's product in that warehouse. And it was that one piece of paper, that one claim that had nothing to do with what this religious order does, that led to a law firm. It led to court records and it led to millions of dollars in insurance coverage. So it's those types of things that keep you going and keep you curious, so.

Lynda Bennett: All right, Brian, well, that's really great. You've shown us that curiosity really does pay off and you are the ultimate insurance geek. You not only get to review terms and conditions, but you are the guy behind the big dig that brings us the treasure trove of useful documents to prove up these policies. So thanks very much for joining us and we'll see everybody next time.

Brain Della Torre: Thanks so much for having me. It was a pleasure.

Lynda Bennett: My pleasure. Thank you.

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