



Lowenstein Sandler's In the Know Series Video 22 – Best Practices for Negotiating Manuscript Exclusions

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Eric Jesse:

Hi, I'm Eric Jesse from Lowenstein Sandler's [Insurance Recovery Group](#), and welcome to "[In the Know](#)."

Today we're going to be discussing some best practices for negotiating manuscript endorsements to an insurance policy, with a particular focus on exclusions.

Unlike commercial policy forms that have undergone regulatory scrutiny, revisions to insurance policies that are specifically negotiated and added by the parties—often referred to as “manuscript” endorsement—are more prone to lack uniformity in drafting and interpretation. Because of this, manuscript endorsements are fertile ground for coverage disputes. It is important to take care when adding these customized exclusions, which may result in an unintended gap in coverage. Policyholders should employ three best practices when negotiating these endorsements.

First, the introductory, or “lead-in,” language used in an exclusion can significantly impact its scope and application to a claim. Exclusions that apply to claims “arising out of, relating to, or in any way connected with” the excluded conduct may be more broadly applied by courts, in contrast to narrower “lead-in” language. So for instance, exclusions that use “for” or “because of” lead-in language can confine the exclusion’s reach. Resisting broad “lead-in” language in a manuscript exclusions is critical to avoiding an unexpected denial if a claim arises.

Second, the excluded conduct or issue should be defined as narrowly as possible. Insurers often add manuscript exclusions for pre-existing litigation or claims disclosed during underwriting. In crafting the exclusion, insist on unique identifiers, such as the full caption and docket number of the litigation. Doing so can help to avoid the exclusion of subsequent litigation that bears some similarities to, but is not the same as, the existing case.

Third, Policyholders should avoid the addition of exclusions applicable to “any claim” arising out of the excluded conduct. Insurers like to argue such language means that the policy bars coverage for the entire lawsuit, even where there are other, clearly covered claims.

To cut off this argument, policyholders should include language making clear that the exclusion applies only to “that portion of loss” or “such damages” attributable to the excluded conduct or circumstance.

Thank you for joining us. We look forward to seeing you next time on “[In the Know](#).”