



**Lowenstein Sandler's In the Know Series**  
**Video 31 –How Policyholders Can Encourage Early Insurance Payouts: Tips for Leveraging Indemnity Risk**

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**Heather Weaver:** Hi, I'm Heather Weaver, counsel in Lowenstein Sandler's [Insurance Recovery Group](#). Welcome to "[In The Know](#)."

Today we are going to discuss ways in which policy holders can incentivize their insurers to resolve claims on their behalf, even before their duty to indemnify has been fully established.

There is so much focus on the duty to defend, since that is determined first based on whether the allegations in a complaint against the insured are potentially covered. However, considering the likelihood of the duty to indemnify on an ongoing basis can in many situations result in a more favorable outcome for both the policyholder and its insurer.

- **First**, leverage any helpful evidence from the underlying action that suggests the insurer is likely to be held liable. This could include witness statements, expert reports, deposition transcripts, or documents showing that the facts are shaking out in a way that the claims are likely to fall within the scope of coverage under the policy. If your evidence is strong enough, your insurer may prefer to pay out early rather than risk an unfavorable outcome down the road.
- **Second**, make sure that your insurer is aware of any potential for large financial exposure, including the potential for a judgment in excess of the policy limits. Remind your insurer of its duty of good faith and fair dealing. If you can show that your insurer is dragging its feet, or that there is a settlement demand within policy limits, you can leverage that to push your insurer to step up.

You should always remind your insurer that it is in its best interest to act in good faith, to avoid a bad faith claim or other legal challenges that could result in greater financial risk.

- **Third**, emphasize the risk of prolonged litigation for both sides, even if the insurer's duty to indemnify is unclear. Prolonged legal battles are expensive. If the insurer anticipates that a claim might lead to complex litigation or significant legal expenses, they may prefer to settle early to avoid escalating costs.

Defense costs, expert work, and other legal fees add up quickly and, in some cases, will exceed the amount for which the underlying claim can settle. Do not be afraid to point that out to your insurer.

- **Finally**, insurance companies are aware that maintaining a good relationship with policyholders is crucial for customer retention and brand reputation. If a claim is not settled promptly or fairly, it could lead to dissatisfaction and harm the insurer's reputation. Remind your insurer that good claims handling practices and considering settlement even before the duty to indemnify is established, can help maintain goodwill and trust.

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