



Lowenstein Sandler's In the Know Series Video 33 – Dig Deeper: Understanding Subrogation in Insurance Policies

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AUGUST 2025

Eric Jesse:

Hi, I'm Eric Jesse, a partner in Lowenstein Sandler's [Insurance Recovery Group](#). Welcome to "[In The Know](#)."

Subrogation is a term buried in many insurance policies, but it can impact your business and coverage when a claim arises. In simple terms, subrogation allows an insurer, once they have paid out a loss on your behalf, to step into your shoes and recover money from a third party that may be responsible for that loss.

Here are three key things businesses need to know about subrogation and insurance.

- First, be aware of waiver of subrogation clauses in contracts. Some agreements, like leases or vendor contracts, may require you to waive your insurer's right to subrogate, or may require you to release your counterparty for losses that are covered by insurance. While this can help maintain good relationships with partners, it also means your insurer may not be able to recover losses if another party was at fault.

In that situation, your insurer may try to deny coverage on the grounds that the insured blocked the insurer's ability to subrogate and in turn recover on the loss. Therefore, it is critical to review your policies to ensure that you are permitted to waive and insure subrogation right.

This leads to our second point: waivers of subrogation. Waivers of subrogation endorsements in favor of an insured's clients or customers are commonplace. Insurers often will agree to add them to policies, but you need to ask your insurer and do so before a loss occurs. And while waiver of subrogation endorsements are not necessarily available on commercial property policies, those policies do have provisions in many cases that ratify the insured, again, in advance of a loss of releasing a contractual counterparty.

For example, in a lease agreement for amounts that are covered by insurance. But again, it is critical to check your policies to make sure that they have these provisions.

- Third, after the claim comes in, many policies will require an insured to cooperate with the insurer and not take actions that would prejudice the insurer's subrogation rights, if any. If you are involved in a claim, communicate with your insurer before settling with a third party, because if you accept payment or sign a release without your insurer's sign off, these issues could lead to a coverage dispute or even a denied claim.

Thank you for joining us on "[In The Know](#)."