



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

### Episode 106:

### Bad Faith No More: New York Courts Shift the Insurance Paradigm

By [Lynda A. Bennett](#), [Eric Jesse](#)

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**Lynda Bennett:** Welcome to the Lowenstein Sandler podcast series. Before we begin, please take a moment to subscribe to our podcast series at [lowenstein.com/podcasts](https://lowenstein.com/podcasts). Or find us on Amazon Music, Apple Podcasts, Audible, iHeartRadio, Spotify, Soundcloud, or YouTube. Now let's take a listen.

Welcome to *Don't Take No For An Answer*. I'm your host, Lynda Bennett, chair of Lowenstein Sandler's Insurance Recovery Group, and I'm pleased to welcome back my partner and fellow policyholder advocate, Eric Jesse. Welcome aboard, Eric.

**Eric Jesse:** Good to be here on this hot summer day.

**Lynda Bennett:** Well, today we're going to dive into some big changes in New York's insurance world. Specifically, we're going to talk about how courts are making it easier for policyholders to hold insurers accountable for bad faith. If you're a policyholder who's been dragged through a lengthy and seemingly never-ending claims investigation process or you're an insurance broker who has unhappy clients on your hands or just someone who's interested in how insurance really works when the stakes are high, you're going to want to stick around.

We're talking about two recent cases from New York courts that are shaking up the old rules and giving policyholders a lot more litigation leverage when an insurer refuses to conduct a reasonable and unbiased investigation into a claim. So, I want to start with the old rules of the game, a quick refresher. Traditionally, if a policyholder wanted to sue its insurer for bad faith in New York, the policyholder had to show something pretty extreme, usually that the insurer refused to settle a claim within the available limits. And as a result, the policyholder got hit with a huge verdict or outside the context of failure to settle one particular claim that the insurer engaged in a broader pattern and practice of withholding coverage that was clearly required by the policy's terms and conditions. The courts called it gross disregard for the policyholders' interests, and it

was a very tough standard to meet. Most bad faith cases fizzled out unless the insurer's conduct was really egregious and the factual proofs were substantial. So today, Eric, I want to kick it over to you to talk about the first case.

**Eric Jesse:**

And so, this is where things get interesting. You have this Rockefeller University versus Aetna case where the court really expanded the definition or what's encompassed by bad faith. And so, in this case, the Rockefeller University case, the university was facing hundreds of sexual abuse cases after New York passed the Child Victims Act. The university, they turned to their insurers for help, but instead of stepping up, the insurers dragged their feet as we see all too often. So, they were delaying the claim process. They were ignoring requests for old policy documents. The insurers were refusing to make coverage decisions, and they were pressuring the university to actually drop its lawsuit for coverage. And the court did not buy any of the insurers' excuses here. The judges said, "Look, bad Faith isn't just about the narrow situation of refusing to settle. It can show up in all sorts of different ways."

So, you have slow investigations or communication, stonewalling, you name it, and there's no magic formula to good faith. But insurers have to treat their policyholders' interests equal to their own every step of the way. And if they don't, well, now, under this Rockefeller case, they could be on the hook for damages while beyond policy limits. So, Lynda and our audience, the big takeaway here is that policyholders have a much broader path to bring and potentially succeed on bad faith claims. It's not just going to be about settlement anymore. If your insurer is dragging things out, they're not communicating, you might actually have a strong bad faith case to bring and undoubtedly ups the ante for the insurers.

**Lynda Bennett:**

So Eric, I remember you and I being pretty excited when this case came down because it was a pretty significant shift from the bad faith cases that we had confronted in the past and that very high bar of pattern and practice. And so, I do recall us saying back in October of 2024, when Rockefeller came down, is this a one-off or is this the start of something really good? So?

**Eric Jesse:**

Yes. And what's the answer? Yes.

**Lynda Bennett:**

We got our answer in April of 2025 as there was another case, and this one is called the Archdiocese of New York versus Century Indemnity. So, in that case, the Archdiocese was hit with nearly 1,700 sexual abuse lawsuits. So similar type of claim to what we had just seen in Rockefeller. And in the Archdiocese case, the insurers initially agreed to defend the Archdiocese but then insurers became insurers, and they started playing hardball. After acknowledging the defense obligation, they started denying

coverage. They also started to refuse to attend mediations. The way the court characterized it, the insurers were basically using a wait and see approach to avoid paying claims. So, they would send the policyholder off to the mediation without making a commitment to coverage and wait and see what was going to happen. Well, the Archdiocese fought back and they said, “this is not only a breach of contract under these policies, but it’s bad faith.”

And the Archdiocese took it an even further step by saying it’s also a violation of New York’s consumer protection law. So that’s general business law section 349. And we’ve seen this movie before. The insurers tried to immediately get those claims thrown out. Court said, “no way.” The judge found that the Archdiocese had laid enough facts to show a pattern of obstruction and bad faith. Again, not just about settlement, but about the whole way the insurers went about handling these claims. And what’s really interesting is that the court said these bad faith claims weren’t just a repeat of the breach of contract claims, which Eric, as you and I know, is the insurers go-to argument when they seek to dismiss these bad faith claims very early on in the case. And fortunately, in the Archdiocese case, the court recognized that the bad faith claim was based on different facts and sought different damages, like—and this is where some of the game changing starts to come in—the attorney’s fees to pursue your coverage are now going to be on the table when they’re caused by the insurers delaying tactics. And also, and this was another really important takeaway from the Archdiocese case, the court said that when insurers use these standard form policies, the CGL policies that were at issue in that case and many others that we deal with, their conduct can be challenged even under those consumer protection laws that Archdiocese cited, not just contract law. So that was pretty big news.

**Eric Jesse:**

And so, it’s good to see that this isn’t a one hit wonder that we have at least two cases, and maybe there will be more coming. But Lynda, what’s the bottom line here? What does this mean for our listeners and for policyholders in general?

**Lynda Bennett:**

Well, as you said, Eric, the fact that Rockefeller is not a one-off, and we’re starting to see at the timing of these two cases, I think is significant. It’s starting to show a trend that insurers are going to be held accountable for bad faith in New York, and there are steps that you need to take as a policyholder so that bad faith, which used to be a dead letter, can now actually be a significant litigation lever. And so, in order to be in a position to exert that leverage, here’s the kind of things that policyholders need to do. First, they need to keep careful records of every interaction that they have with their insurers: emails, phone calls, take notes when you’re doing the phone calls because that’s where we start to get into trouble on

what is the evidence that you're going to be able to present at trial of the bad faith when you're relying on people's memory.

So, take the notes, document, document, document. Also, don't just focus on whether your insurer is settling the claims. One of the really big themes out of both Rockefeller and the Archdiocese is courts are starting to look carefully just about how the carriers going about their business of are they conducting a prompt claims investigation? Are they clearly communicating their coverage positions along the way? Are they simply throwing up roadblocks, dragging their feet through never-ending information requests? All of that conduct, which many of our clients have experienced every day on every one of the claims that we handle, these cases now stand for the proposition that that shouldn't be business as usual, and courts are going to be willing to look at it. So, if your insurers playing games, take a look at this because you might be able to recover even more than just the policy limit.

You can get those attorney's fees that you're incurring to secure the coverage that policyholder is entitled to. You can get potentially punitive damages, and if the insurer's failure to pay that money on your behalf promptly lead you to miss investment opportunities, or you have consequences that flow from not having that cash in the door, all of those kinds of damages are now on the table as a result of these two decisions.

**Eric Jesse:**

So just to sum it up, these two cases mark a real shift in New York law. I think the bar for policyholders to bring bad faith claims is now lower, and insurers have to be a lot more careful about how they're handling their claims from the very beginning to the very end. So, if you're dealing with a big insurance claim, especially high stakes situations like sexual abuse lawsuits, you have more tools than ever to hold your insurable accountable in New York.

**Lynda Bennett:**

Totally agree. So that's all for today's episode. If you're a policyholder, now is a great time to review your insurance policies and your open claims. Make sure that you're documenting everything to build up your bad faith record if your insurer is not stepping up the way that they should be. And please continue to tune in to *Don't Take No For An Answer* as we continue to dig even deeper into insurance litigation trends and what policyholders can do to protect themselves in complex claims. Thanks so much for listening, and we'll see you next time.

**Eric Jesse:**

All right, take care everyone.

**Lynda Bennett:**

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