



**Lowenstein Sandler's In the Know Series  
Video 13 – Policyholders vs. Insurers: 3  
Arguments to Make When Selecting Defense  
Counsel & Hourly Rates**

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**Eric Jesse:**

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

When companies face a lawsuit or other claims, insurers often take a “one size fits all” approach to the selection of—and the rates that they will pay for—defense counsel. But policyholders are not necessarily required to accept the limitations that insurers, after the fact, try and place on their defense obligations. Today, we are going to discuss three arguments that policyholders can and should press when negotiating with insurers over the selection of counsel and their hourly rates.

**First**, policyholders should understand that an insurer’s right to select defense counsel is not absolute. Some jurisdictions hold that, if an insurer agrees to defend under a reservation of rights, an insured is entitled to appoint its independent counsel and charge all reasonable attorneys’ fees to the insurer.

**Second**, the reasonableness of fees incurred by independent counsel are going to be evaluated on a case-by-case basis. While the precise factors will depend on the jurisdiction, courts frequently consider the complexity of the underlying matter and the rates charged by lawyers for similar services in that geographic area. Therefore, while an insurer may try to treat a mass tort lawsuit, like a fender-bender claim, the reality is that a policyholder is probably entitled to hire more sophisticated and expensive counsel for that mass tort claim.

**Third**, even when an insured is not entitled to independent counsel, most policies do not specify the hourly rates in their terms and conditions. Particularly where the insured has a right to participate in the selection of defense counsel, policyholders often require insurers to pay all reasonable defense costs, so long as they are incurred with the insurer's prior written consent. Here, too, policyholders should not simply take an insurer’s word for it on the meaning of reasonableness, and insurers may not unreasonably withhold their consent or delay in advancing defense costs to leverage a policyholder into accepting lower rates.

Thank you for joining us, and we look forward to seeing you next time on "[In the Know](#)."