



**Lowenstein Sandler's In the Know Series**  
**Video 32 – Claims and Potential Claims: Avoiding Pitfalls in D&O Insurance**

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Hi, I'm Alex Corson, associate in Lowenstein Sandler's [Insurance Recovery Group](#). Welcome to "[In The Know](#)."

Today we're going to discuss the important distinction between a claim and a potential claim in a D&O insurance policy. Most D&O insurance policies require that the insurer receive notice of any claim during the policy period.

However, when and whether a claim has been made might not always be clear. "Claim" is defined typically to include more than just a formal lawsuit and may include any written demand for relief. For this reason, most D&O insurance policies also allow policyholders to provide notice of a potential claim, in order to preserve their right to insurance after the policy period expires, but only for those circumstances that have not yet resolved into a claim.

However, there are a few important caveats to keep in mind.

- **First**, specifics: policyholders should carefully review the Notice of Circumstances section in their policy. While forms may differ from insurer to insurer, D&O policies generally require a greater level of detail for a notice of circumstances than they might for a notice of claim. These details typically focus on the who, what, when, where, and in some cases, the why the policyholder has reason to suspect a future claim.
- **Second**, timing: policyholders should provide their Notice of Circumstances as soon as possible and well before the policy expires, if at all possible. Because of the detail required, insurers may not immediately acknowledge that a proper Notice of Circumstances has been made.

When there are unknowns, policyholders should be sure to build in plenty of time to answer any factual questions or follow-ups the insurer may have before the policy expires. Providing an inadequate notice of circumstances right

before renewal may do more harm than good. An insurer looking to avoid coverage in that circumstance might argue that coverage is unavailable under the expiring policy because of the lack of detail, while the new policy excludes coverage for known circumstances.

- **Third**, preparation: policyholders should conduct regular policy audits to ensure they fully appreciate the effect of a Notice of Circumstances. Not every policy treats a Notice of Circumstances the same, and it is important to carefully study the language that is used in your policy. Not every insurance company will provide the same level of treatment for a potential claim after the policy expires. A policyholder should pay particular attention to the impact that switching insurance providers may have on their notice of circumstances. When it comes to D&O insurance, as with all insurance policies, the words matter.

We hope this episode is helpful to policyholders facing a potential claim that want to preserve their D&O insurance rights.

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