

# Policyholder Playbook Episode 11: Read Every Decision by Your Judge

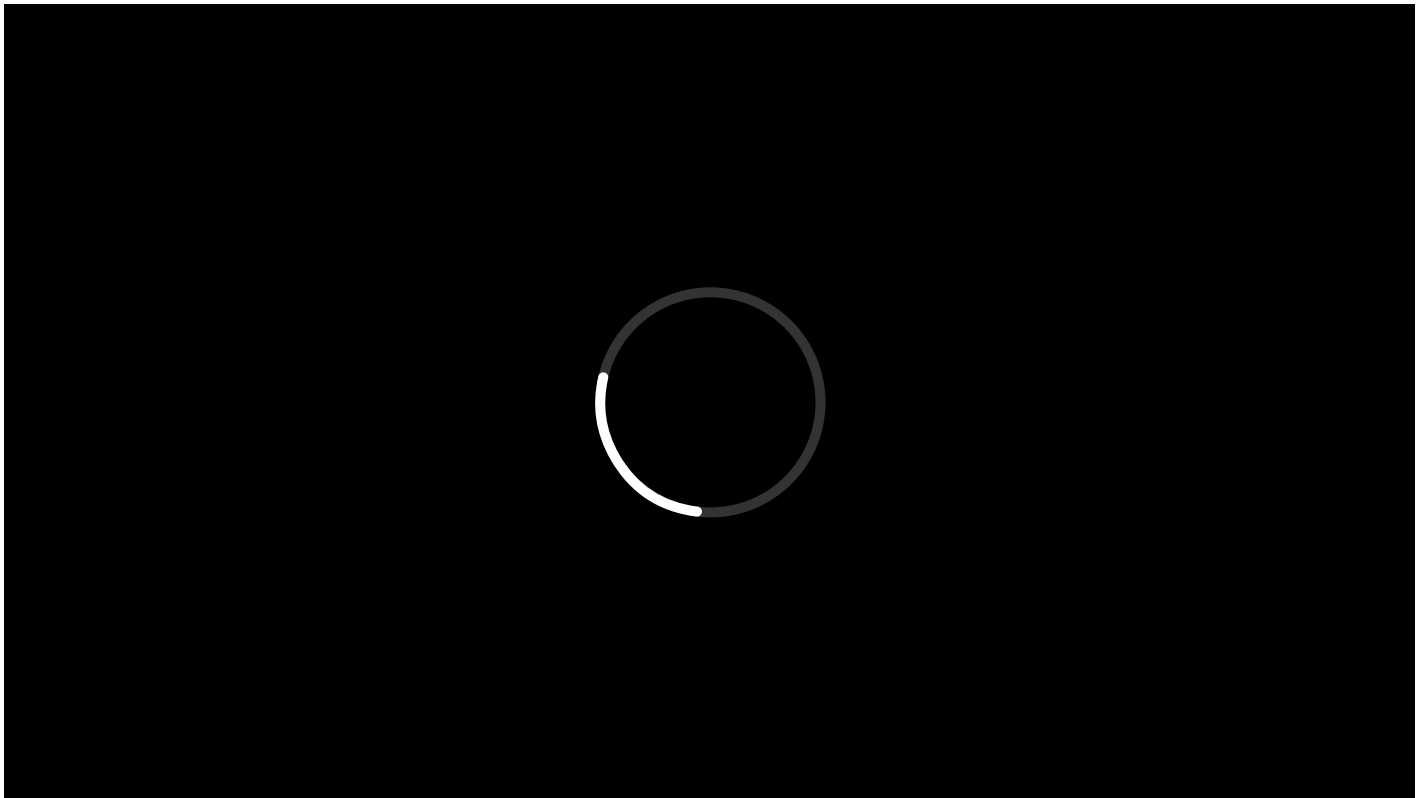
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October 31, 2023 Greg Van Houten

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PRACTICES Insurance Recovery, Litigation

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## Show notes:

So you're involved in insurance coverage litigation, and you've been assigned a Judge. What to do next? A play in my playbook . . . skim through every insurance coverage decision issued by your judge. Type your judge's name into WestLaw or Lexis, the word "insurance," and skim. There may be zero decisions, there may be forty, but no matter the result you're gathering important information. At worst you'll be able to gain some insight into whether your Judge has some existing understanding of insurance law. Do I need to use that extra sentence to explain to the Judge the difference between the duty to defend and the duty to indemnify, or has my Judge already written about that difference in five opinions, such that there's no need for me to waste space teaching her something she already knows. That's the baseline – gaining that insight. But what about the holy grail? How about a decision, from your Judge, on your issue. Sounds unlikely, but you never know.

Two years ago, in a case captioned *Lundberg, LLC v. Twin City Fire Ins. Co.*, pending in federal court in Seattle, we found the grail. The preliminary statement of our summary judgment motion on the duty to defend began, "This Court considered a mirror image of this motion about a year ago in

Phoenix Insurance v. Diamond Plastics Corp.” We then explained the overlap between our case and Phoenix, where our Judge held the insurer had a duty to defend. We closed the section by stating that the same holding was required in our case. During oral argument, I reminded the Court of the *Phoenix* decision and its application.

A few months later, the Court issued an Order, requiring Twin City to exercise its duty to defend. My favorite part of the opinion, the Court wrote, after disposing of some arguments raised by Twin City, “This is consistent with this Court’s ruling on analogous facts.” The Court then cited *Phoenix*. The holy grail.

So, this play, once you’re assigned a Judge, skim through every insurance decision rendered by that Judge. You never know what you’ll find.