

Policyholder Playbook Episode 21: Carrying the Insurer's Argument to Its Logical Extreme

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Quick Overview of the Play – Consider carrying the insurer's argument to its logical extreme—in letter writing or in briefing—to underscore why the insurer's argument fails.

The best policyholder advocates creatively attack insurer arguments. One device that is perhaps underutilized is carrying the insurer's argument to its logical extreme to demonstrate the absurdity or flawed nature of the insurer's argument.

Underscoring the utility of this technique, courts themselves have used it to support their rejection of an insurer's flawed argument. A California appellate court did so in *A-H Plating, Inc. v. American National Fire Ins. Co.*, 57 Cal. App. 4th 427, 439–40 (2d Dist. 1997). There, a commercial general liability insurer argued that a company "expected" a series of chemical spills, such that they were not covered, "as evidenced by the fact that the company had adopted measures to prevent, contain, and clean up spills." *Id.* at 439. The court soundly rejected that argument:

American National's argument, **if taken to its logical extreme**, would render all accident-based insurance policies worthless. A company typically purchases a commercial general liability policy to provide some means of protection against injury-producing events. Naturally, the company would not have obtained insurance in the first place unless it had "expected" such an event. An "expected" event cannot constitute an "accident." Thus, the insurance would provide no coverage at all. Plainly, we cannot accept this interpretation of "expect" since it would lead to absurd consequences.

By the same token, we fail to understand how a ... company "expects" a particular spill just because it has adopted procedures to prevent, contain, and clean up spills in general. By taking precautionary measures to protect the environment, a company does not eliminate the possibility of "accidents." *Id.* at 439–440 (emphasis added).

The moral of the story? Consider whether to carry the insurer's argument to its logical extreme to underscore why the insurer's argument fails.