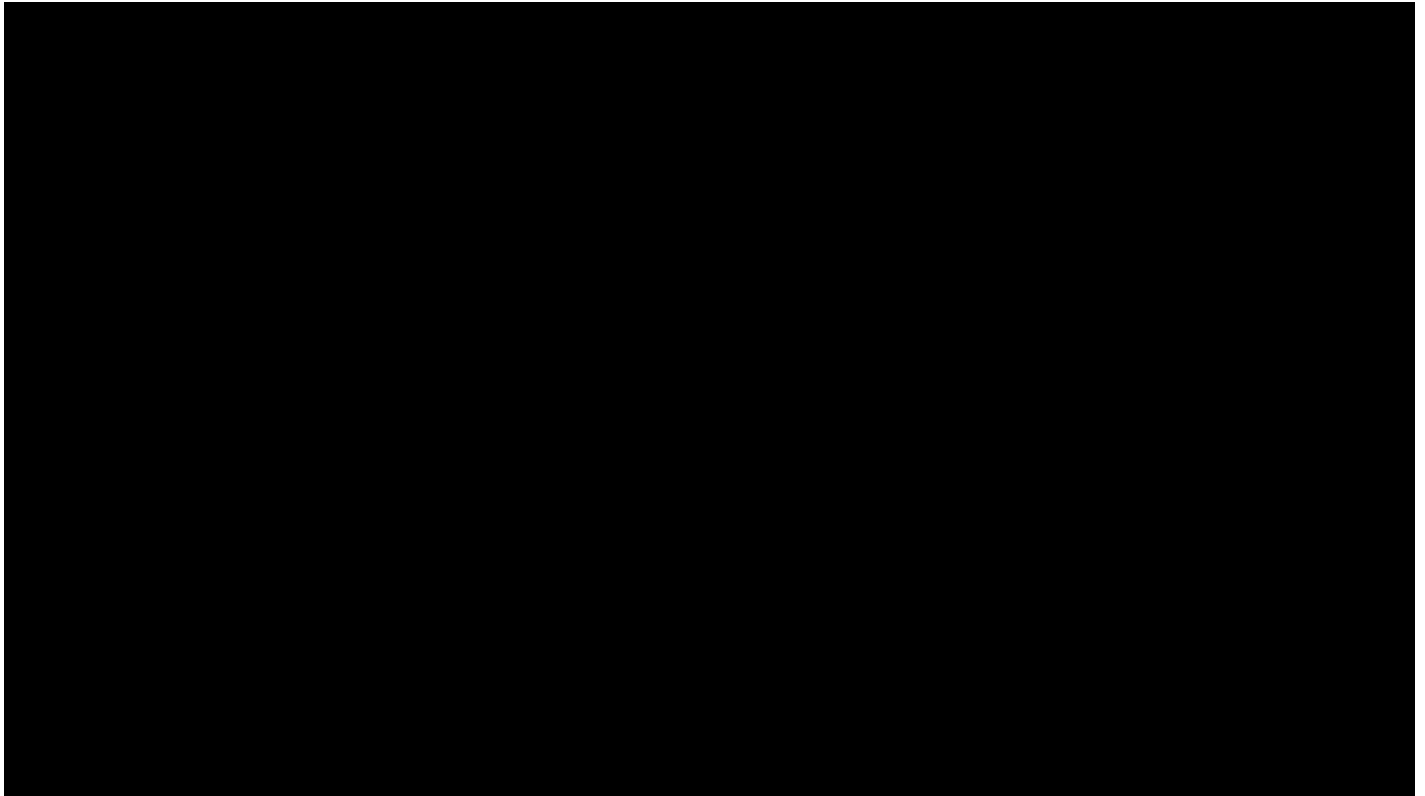


Policyholder Playbook Episode 24: Insurance Policy Language Is Negotiable, and Every Word Matters

May 14, 2024 Greg Van Houten

PRACTICES Insurance Recovery, Litigation



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Show notes:

The best policyholder advocates know that, particularly for large businesses, insurance policies are not necessarily take-it-or-leave-it contracts. Their terms can be negotiated, and the difference of a word can make all the difference.

Take war exclusions, which have received significant attention lately, including in the wake of Merck settling a \$1.4 billion cyberattack case with its property insurers, after those insurers raised war exclusions as a coverage defense. The Merck coverage case went all the way up to the New Jersey Supreme Court; the parties later settled. Because of Merck and because of the idea that some cyberattacks may constitute acts of war, war exclusions have received significant scrutiny, but importantly there is no single war exclusion . . . some insurers—take the London market, for example—have many different versions at their fingertips. Knowing that, and knowing how acts of war may affect business—think the conflicts in Ukraine, the middle east, cyber-attacks led by state actors—a careful review of war exclusions, and pushing back on and requesting changes to suboptimal policy language, is critical.

And this doesn't just go for war exclusions—it goes for your policy at-large ... any form, any level of coverage. Terms can be negotiated with your underwriters and every word matters. The best policyholder advocates, the best risk management teams, bring together insurance coverage counsel and their broker teams to do this work, to identify policy wording to change, potential gaps in coverage, and the like. To be clear, insurers may not agree with every proposed change. Some proposed changes may cost money—an increased premium. But the difference of a word can make all the difference when it comes to a million, hundred million, or in the case of Merck, over a billion dollar insurance claim, so this work is often worth the time, effort, and money.

So, take one thing away—review and, where appropriate, negotiate your policy. It's not always take-it-or-leave-it.