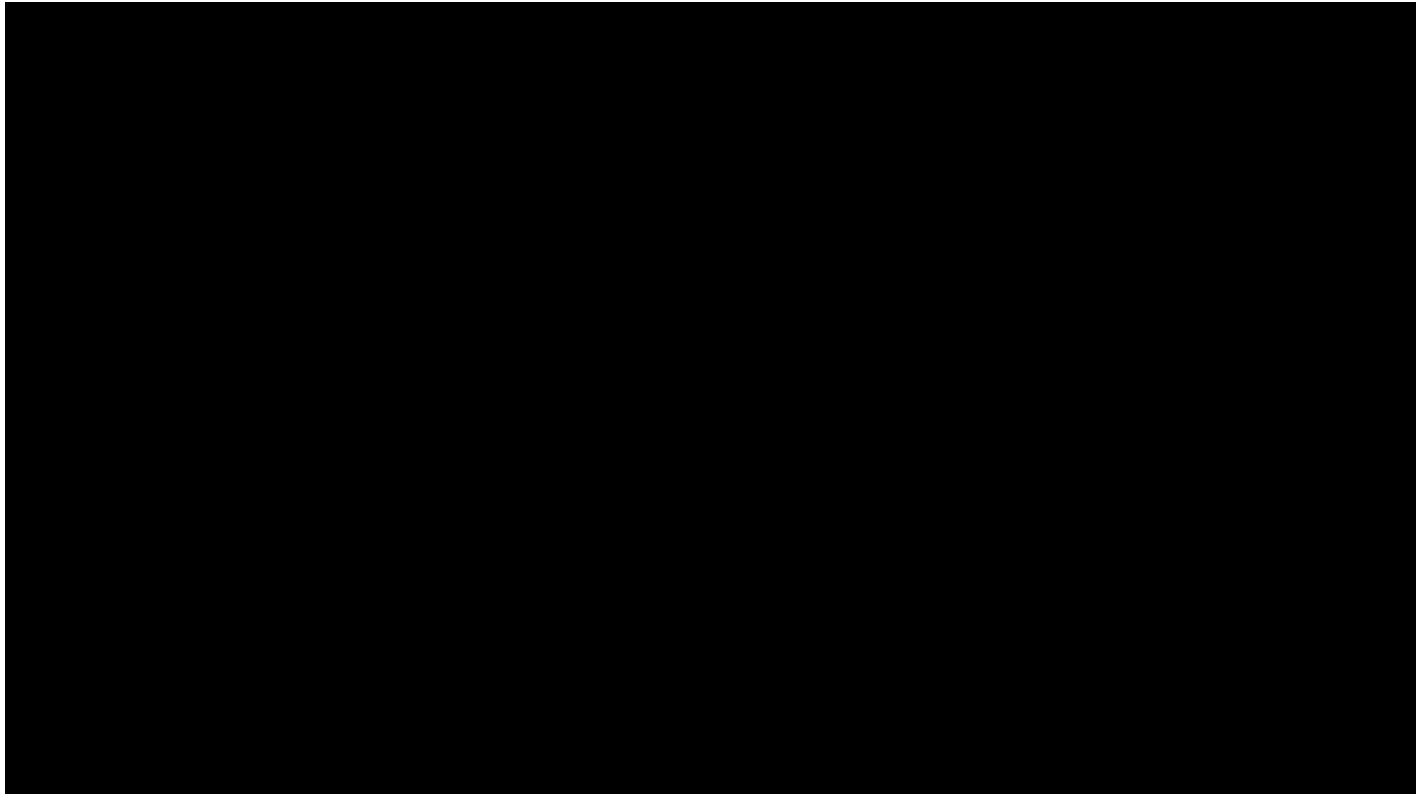


Policyholder Playbook Episode 25: Carefully Assess Whether and How To Involve Your Insurer in Underlying Settlement Negotiations

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Show notes:

The best policyholder advocates know and appreciate that insurers often must be involved in, or must be given an opportunity to participate in, underlying settlement negotiations, and that they generally cannot settle an underlying claim without their insurer's consent. Indeed, most liability policy policies say something along the lines of, you may not settle a claim without our consent. And this obligation travels up the insurance tower—meaning, if an underlying settlement may implicate multiple layers of coverage, each layer often needs a seat at the table.

But importantly, if an insurer refuses to take that seat—if they refuse to meaningfully engage in the process—the policyholder may be able to settle without that insurer's consent.

A recent decision out of a federal district court in Michigan, *Sun Communities v. Navigators Insurance*, highlights this concept. There, a company was facing a potential eight-figure verdict in a tragic wrongful death case. The company sought to settle the claim and involved its insurers in the

process, but one of its excess insurers refused to commit any money to a settlement, without explanation. The company, faced with contributing millions of dollars of its own funds to a settlement or going to trial, chose the former, capping its risk.

The company then sought coverage for the settlement from its excess insurer, who denied the claim, arguing that the company failed to obtain its consent to the settlement. The company argued in response, “this argument ignores the real issue here. Where its insured has been sued, an insurer cannot simply sit back, refuse to entertain a settlement offer unreasonably and in bad faith, and then hide behind settlement consent provisions to avoid liability when that consent is entirely a matter of its own discretion.” The court agreed, denying the insurer’s motion for judgment on the pleadings on the lack-of-consent issue.

The moral of the story—think carefully about involving your insurers in underlying settlement negotiations, and think carefully about whether you need your insurer’s consent before settling a claim. But, if an insurer refuses to engage in that process, you may have the right to settle that claim without the insurer’s consent.