# Policyholder Playbook Episode 27: Put the Full-Court Press on an Insurer That Refuses to Settle a High-Risk Claim

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PRACTICES Insurance Recovery, Litigation

**Quick Overview of the Play** – Put the full-court press on an insurer that refuses to settle a high-risk claim by retaining coverage counsel, leveraging your insurance broker, pushing your lower-level insurer to tender limits and pushing your higher-level insurer to write a hammer letter.

The best policyholder advocates know the various tools that can be used to push an insurer to settle a high-risk claim.

One tool is retaining experienced insurance coverage counsel, who can quarterback the situation and the dialogue with the insurer, including by creating and maintaining a written record of all the reasons why the insurer should settle. Perhaps there is a risk that, if the claim is not settled, it could result in an above-limits judgment. In that case, the recalcitrant insurer may have bad faith exposure. *See, e.g., Nunn v. Mid-Century Ins. Co.*, 244 P.3d 116, 122 (Colo. 2010), *as modified on denial of reh'g* (2011) (concluding "that an insured who has suffered a judgment in excess of policy limits [may] maintain an action against its insurer for bad faith breach of the duty to settle"). Experienced insurance coverage counsel can make that clear.

Another tool is engaging the insured's broker, who likely has a claims advocacy department and strong business relationships with the insurer. Marsh, on its website, states that its "claims advocates manage large, complex, or contentious claims, helping ensure favorable outcomes by leveraging our expertise and market relationships." Aon says that "[c]laim advocacy involves the deployment of specialist resources and capabilities to help organizations achieve the best possible claim outcomes." Lockton guides its insureds "through complicated claim issues, working as [their] advocate at every step." Other brokers offer the same or similar services, all of which can be leveraged to push an insurer to settle a difficult claim.

If the recalcitrant insurer is an umbrella or excess insurer, it is worth engaging the underlying insurer(s) and requesting that they tender their policy limits to the recalcitrant insurer. Doing so contractually "attaches" the recalcitrant insurer's policy and thereby forces that insurer to take a coverage position—the recalcitrant insurer cannot, in that case, say it has no duty to respond until the underlying coverage exhausts. So, by engaging the underlying insurer(s), the insured may be able to take away a key coverage defense of the insurer who should fund the settlement.

Lastly, if an excess insurer sits above the recalcitrant insurer, and if there is risk that the claim—if not settled—may penetrate the excess insurer's policy, then the insured may be able to convince the excess insurer to write a "hammer letter." A "hammer letter" notes the "certainty of a plaintiff's verdict" and the risk of an above-limits verdict, and so demands that the insurer facilitate a settlement. *Am. Guarantee & Liab. Ins. Co. v. Liberty Surplus Ins. Corp.*, No. 15-cv-0949, 2018 WL 11249929, at *8 (N.D. Ga. Sept. 25, 2018). Here, too, the idea is to increase the pressure on the recalcitrant insurer.

In sum, the best policyholder advocates attack an insurer who refuses to settle from all angles. From insurance coverage counsel, brokers, underlying insurers, and excess insurers. Sometimes that is what is needed to settle a difficult case.

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