

Policyholder Playbook Episode 7: Scour the Policy for Provisions That Amplify Your Argument

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Step one in any insurance coverage dispute is to review the insurance policy. It is important to read every page and every word, even in sections of the policy that, at first glance, might not have much to do with your dispute. There's an oft-overlooked benefit to doing so: you might find a provision that amplifies your coverage maximizing argument.

We recently used this technique enroute to a ruling that a liability policy pays defense costs outside of limits—a victory that roughly doubled the value of the policy. The case involved a primary-level duty to defend policy, but we sought coverage under a special worldwide territory endorsement that called for the reimbursement of defense costs and loss “up to the applicable Limit of Liability.” We argued that, since the Limit of Liability section of the policy capped only the amount the insurer had to pay for “Loss,” it necessarily did not cap defense costs—in effect, we argued there was an “applicable” Limit of Liability for loss, but not defense costs.

That straight-ahead policy language argument made sense, but a provision in another section of the policy was the nail in the coffin: in a medical marijuana testing endorsement that had *nothing to do with* our dispute, it said that defense costs “are part of, and not in addition to, the Limits of Liability.” It further provided that the payment of defense costs “will reduce, and may exhaust, such Limits of Liability.” The worldwide territory endorsement we sought coverage under said nothing like that. We therefore were able to argue that, if the insurer wanted defense costs to erode limits under our endorsement, it could have used the language that it used in the medical marijuana testing endorsement, but since it did not, it cannot receive the benefit of that language. Here's exactly what we wrote in our reply brief:

“Homeland argues that the endorsement ‘plainly state that defense costs erode limits.’ But the endorsement doesn’t say anything like that, and Homeland knows how to draft such language—it did so with the medical marijuana endorsement.”

The Court agreed with our position, saying in its order: “if [the insurer] wanted defense costs to erode policy limits, it could have written that into the Policy.” The Court then cross-referenced the medical marijuana testing endorsement. *Homeland Insurance Co. v. Clinical Pathology Laboratories, Inc.*, No. 20-cv-783, 2022 WL 2820741, at *16 (W.D. Tex. July 19, 2022). The Court ultimately held that “[t]he Court agrees with [the policyholders] that under the 2017 Policy, defense costs do not erode policy limits.” *Id.*

Quick Overview of the Play

1. Scour the entire policy (or policies), including sections that, at first glance, have nothing to do with your dispute.
2. Particularly in those other sections, look for language that amplifies or supports your argument.

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