

## Policyholder Playbook Episode 42: A Theme and Catchphrase Catapult New York Bad-Faith Law

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**PRACTICES** Insurance Recovery, Litigation

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**Quick Overview of the Play** – To maximize the likelihood of successfully pleading or arguing a tough cause of action or theory—like bad faith in New York—leverage the themes and catchphrases used in prior successful cases.

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The best policyholder advocates don't reinvent the wheel when they don't have to, and they leverage the success of other policyholders to maximize the likelihood that they are also successful. What does this mean in practice? Imagine Policyholder A is successful on a tough issue in Case A. Policyholder B is now dealing with the same type of tough issue in Case B. Instead of starting from scratch, Policyholder B scrubs the filings in Case A and looks for pieces of Case A to adopt and use in Case B. Some of the best pieces to use are themes and catchphrases, as themes and catchphrases resonate with real people, including judges and their clerks.

In early 2025, this technique has been on full display in New York, as policyholders have busted open the bad-faith door in the wake of the First Department's decision in *Rockefeller University v. Aetna Casualty and Surety Co.*, which we discussed in [Episode 31](#). In Episode 31, we discussed the advantages of developing a succinct and compelling theme to tell your bad-faith story. We featured the themes and catchphrases used by the policyholder in *Rockefeller University*, including its statement that the “insurers developed a wait-and-see strategy to obstruct and delay [the] claims resolution while underfunding their reserves.”<sup>1</sup> We noted that, citing the policyholder's “wait-and-see” catchphrase, the appellate court upheld the trial court's denial of the insurer's motion to dismiss—meaning the policyholder's bad-faith claim advanced to discovery (something that happened relatively infrequently in New York, until *Rockefeller University*).

Since *Rockefeller University*, a policyholder has prevailed on summary judgment on the issue of bad faith, with the court stating that the insurer's “wait-and-see strategy...in handling Plaintiff's claim constitutes a breach of the covenant of good faith and fair dealing.”<sup>2</sup> More recently, in *The Archdiocese of New York v. Century Indemnity Co.*, the policyholder defeated the insurer's motion to dismiss the policyholder's bad-faith claim.<sup>3</sup> In *The Archdiocese*, the policyholder used—on page two of its opposition brief—the same theme and catchphrase used by the policyholder in *Rockefeller University*. The policyholder argued that the insurer “engaged in a deliberate corporate scheme of delay, avoidance and unfair claims settlement practices as part of a ‘wait-and-see’ strategy that improperly seeks to elevate its corporate financial performance over the insureds' legitimate interests.”<sup>4</sup>

It worked. The court denied the insurer's motion to dismiss and in doing so cited *Rockefeller University* and highlighted the policyholder's “wait-and-see” theory.

The bottom line? To maximize the likelihood of successfully pleading or arguing a tough cause of action or theory, leverage the themes and catchphrases used in prior successful cases.

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<sup>1</sup> See Br. of Pl.-Respondent, *Rockefeller*, 2024 WL 4335555, at \*1 (1st Dep't June 25, 2024) (emphasis added).

<sup>2</sup> *Wing on Realty, Inc. v. DB Insurance Co., LTD (US Branch)*, No. 656844/2020 (N.Y. Sup. Ct. N.Y. Cnty. Apr. 7, 2025).

<sup>3</sup> See *The Archdiocese of New York v. Century Indemnity Co.*, No. 652825/2023 (N.Y. Sup. Ct. N.Y. Cnty. May 7, 2025).

<sup>4</sup> See Defs.' Opp. to Pl.'s Mot. to Dismiss at 2, *The Archdiocese*, No. 652825/2023 (N.Y. Sup. Ct. N.Y. Cnty. Oct. 1, 2024) (Doc. No. 177).