Policyholder Playbook Episode 43

May 27, 2025 Greg Van Houten

PRACTICES Insurance Recovery, Litigation

Quick Overview of the Play – A recent federal district court opinion underscores that an insurer's reserves and communications with its reinsurers—which may contain the insurer's most candid assessments of a claim—may be discoverable.

The best policyholder advocates want to understand what the insurer *really* thinks about the policyholder's claim, so they accordingly seek to discover the reserve the insurer set on the claim and the insurer's communications with its reinsurers about the claim. The reserve the insurer sets on the claim may provide insight into the insurer's evaluation of what the policyholder is really owed. For example, an insurer setting a $5 million reserve on the claim is telling, particularly in a case where the insurer argues the policyholder is owed only $1 million. The insurer's communications with its reinsurers, as discussed in Episode 10, may provide the same sort of insight, as an insurer's communications with its reinsurers may include the insurer's candid assessment of its potential liability.

A recent federal court decision issued in Maryland, in *Sinclair, Inc. v. Continental Casualty Co.*, underscores that, in the right circumstances, reserves and reinsurance communications may be discoverable.[1] In *Sinclair*, the policyholder sought coverage for losses sustained in connection with a cyber-attack.[2] The policyholder's excess insurer contended that the policyholder's losses were not covered, so the policyholder sued, bringing breach of contract and bad faith claims.[3]

In discovery, the policyholder sought, among other things, "all documents concerning [the insurers'] calculation or setting of loss reserves relating to the cyber claim."[4] The policyholder also sought "all documents and communications shared between [the insurer]…and [its] reinsurers…concerning the cyber claim, the [insurance] policy, or any reinsurance policy."[5] The insurer argued those materials were not discoverable because they were irrelevant, primarily because they "reflect internal business judgments aimed at managing risks, rather than analysis relevant to interpreting coverage obligations."[6] The court disagreed.[7]

With reserves, the court held that the insurer's arguments "speak to the weight of such evidence," but not discoverability.[8] Although the court stated that the reserve-related documents were relevant and thus discoverable, the court did note that, to the extent the documents were prepared in anticipation of litigation, they may not be discoverable under the work product doctrine.[9] With reinsurance communications, the court held that such communications were "relevant to [the policyholder's] bad faith claim and should be produced. Specifically, the documents are relevant to [the insurer's] handling of [the policyholder's] claim and [the insurer's] understanding of the amount it owed [the policyholder] under the policy."[10]

The bottom line? In insurance coverage litigation, consider seeking to discover the insurer's reserves and communications with its reinsurers as they may contain the insurer's most candid assessments of a claim.

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[1] 2025 U.S. Dist. LEXIS 81480, *15–19 (D. Md. Apr. 28, 2025).

[2] *Id.* at *1–3.

[3] *Id.*

[4] *Id.* at *13 (cleaned up).

[5] *Id.* at *16.

[6] *Id.*

[7] *Id.* at *14–18.

[8] *Id.* at *14.

[9] *Id.*

[10] *Id.* at *18.