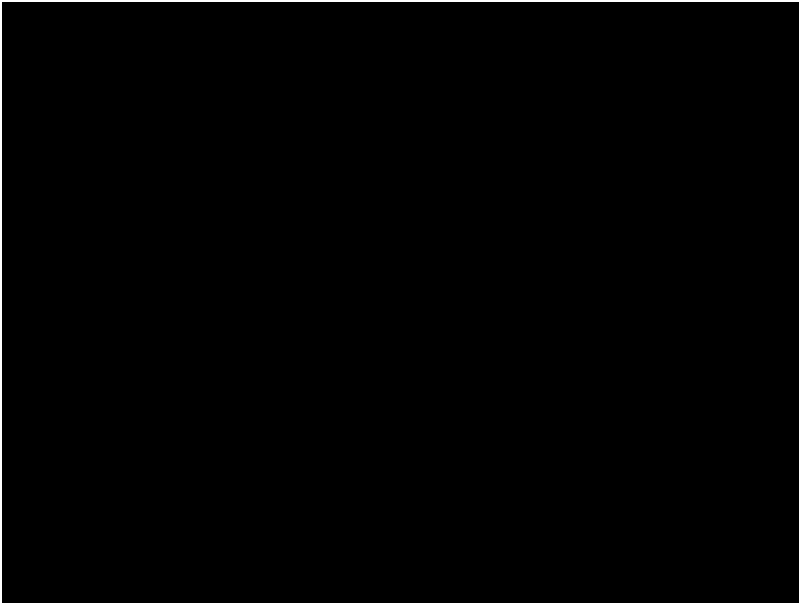


Policyholder Playbook Episode 51: Tips for Settling High-Risk Cases With Insurance, Part 2

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PRACTICES Insurance Recovery, Litigation



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Show Notes:

Today, we are continuing the discussion about strategies for settling potential nuclear verdict cases with insurance. Today's strategy? Properly leveraging a settlement demand from plaintiffs' counsel that is within the limits of the defendants' insurance tower.

[Last episode](#) we discussed the importance of defense counsel and appellate counsel documenting the risks of trial, as doing so puts pressure on the insurer to settle to avoid a possible nuclear verdict. But you can only settle if you have a demand from the plaintiff that is within the world of reason, and settlement leverage becomes significantly greater if the plaintiff issues a demand that is within the limits of the insurance tower.

Why? Because the laws of most states provide that if a plaintiff issues a within limits demand and the insurer refuses to settle, then the insurer is on the hook for any resulting judgment.

Imagine you have a \$10 million insurance policy, a \$9 million settlement demand and a risk of a \$100 million verdict. If the insurer refuses to settle upon the \$9 million demand, the case goes to trial and it results in a \$100 million judgment, the insurer should be on the hook for it all.

So, what frustrates this most often? It is plaintiffs' counsel not understanding this key insurance lever.

But if plaintiffs' counsel gets it and makes a within limits demand, we – as insurance coverage counsel – can then explain to the insurer that if they do not fund a settlement, then they are at risk of a potentially catastrophic judgment. And often that is enough to settle a tough case.