

Maximizing Insurance Recovery Through Effective Policy Limit Demands

JONATHAN DAVIDI AND BRIGITTA CYMERINT

The authors are with Panish Shea Ravipudi LLP.

Insurance policy limit demands can be an effective way to maximize recovery for your clients. By leveraging the timing of the demand, strategy, persuasive storytelling, and concise legal writing, you will be able to obtain the best result for your clients. This article outlines actionable strategies to use in your practice for favorable outcomes, while keeping costs to a minimum.

The first consideration is *when* to make a demand. There are many different times during the pre-litigation and litigation process when you can make a demand in your case: (1) when you obtain the case prior to knowing the policy limits, (2) when you obtain the policy limits, (3) after litigating and working up your case, and (4) repeating a policy limit demand at another stage.

When You Obtain Your Case Prior to Knowing the Policy Limits

Making a demand early on before litigation has many benefits. It puts pressure on the other side and sets the tone for negotiations. It shows seriousness and urgency, and you can establish immediate contact and uncover coverage details through an insurer's response. The con of making a demand too early is that there is the potential to undervalue your case. The longer you litigate, the more time there is to uncover details about liability, causation,

and damages. For example, at an early stage, you might not understand the long-term damages your client will face.

Early demands can also serve as an effective method to test the insurer's response strategy. Insurers may reveal critical details or inadvertently provide insight into their assessment of liability and damages. However, being overly aggressive without sufficient information can backfire if the insurer perceives the demand as premature or unsupported. Be sure to request policy disclosure under your applicable state law. If you make a demand early, frame your demand with general language to allow room for adjustment as facts and evidence develop. It is important to maintain your credibility and reputation throughout every stage of your case. Being more broad in disclosing liability and damages early on will justify the demand and maintain credibility. Keeping pressure on defense counsel is important to maintain an advantage in litigation and negotiations. Sending a demand early on is a good way to achieve this.

When You Obtain the Policy Limits

Once policy limits are disclosed, you can craft a more targeted demand. You should have a better understanding of the liability, damages, causation, and any litigation risks you may have. At this point, you will hopefully be able to give the insurer a better

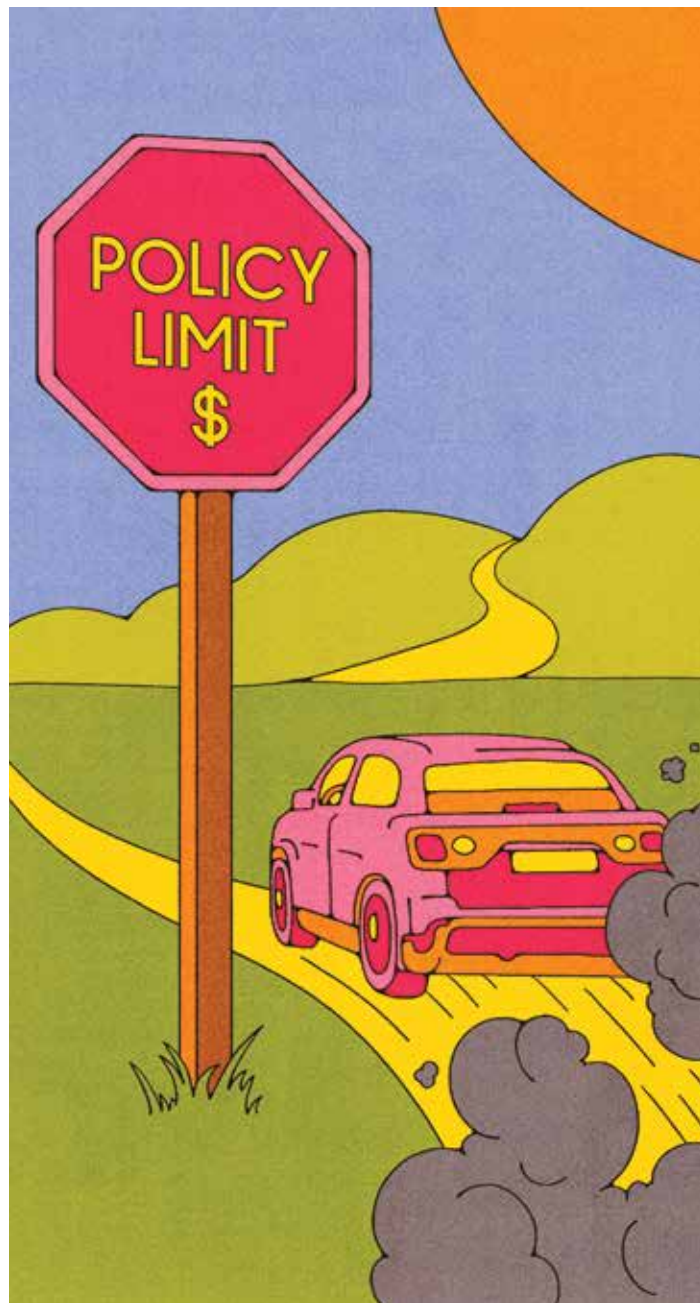
understanding of your case's value. If you think the value exceeds the policy limits, clearly communicate that to the insurer and defense counsel. Highlighting the potential exposure to a verdict exceeding the applicable policy limits can motivate insurers to settle. The pro here is the opportunity to leverage policy disclosure; however, the con lies in tipping your hand too early without fully understanding your case's value. At this stage, it's crucial to assess the insurer's risk tolerance. Knowing the policy limits allows you to emphasize the stakes involved, especially if liability is clear and damages are significant. A well-crafted demand at this point can compel insurers to act in good faith to avoid potential bad-faith claims. Insurers just need enough liability, causation, and damages to be enticed to settle.

When You Have Completed More Litigation

After conducting discovery, gathering medical records, doing depositions, and securing expert opinions, your policy limit demand becomes more robust and powerful. At this stage, you can present a comprehensive case to the insurer and defense counsel. The pros of this approach include greater credibility and pressure on the insurer. A potential con is the time and resources required to reach this stage. Although potentially costly to litigate, this will give you more leverage with insurers and defense counsel. This stage allows you to integrate detailed narratives, expert reports, and economic damages calculations to support your demand. By presenting a clear picture of the potential trial outcome, you can effectively communicate to the insurer the risks of not settling. Including photos for liability, injuries, and damages is helpful to insurers and defense counsel to understand how your case will present to a jury. It is also key to emphasize future damages, such as long-term medical care or lost earning capacity, to illustrate the full scope of harm.

When You Repeat a Policy Limit Demand

This can be done at any stage of litigation. It should be when you obtain something new in evidence beneficial to your case. Whenever you receive an update from your client or uncover something in a deposition, you should send a new demand—for example, when your client undergoes a new surgery or gets a new surgery recommendation. Insurers often reconsider when additional information or developments strengthen your case. Moreover, if a previous demand was denied or ignored, repeating the demand can demonstrate persistence and increase pressure on the defense. Sending more demands keeps the negotiations alive. Repeating demands can also serve as a foundation for establishing a bad-faith claim, especially if the insurer's denial lacks sufficient justification. Keeping the tone professional and reiterating key points ensures that your persistence does not come



across as harassment and is instead powerful advocacy for your clients. When you send another demand, make sure to reference your previous demands to show your efforts of good faith. Attach supplemental documentation that bolsters your position, such as updated medical records or recent expert evaluations.

Statutory law and case law can significantly enhance the strength of your demand. Tailoring legal arguments to the specific facts of your case demonstrates professionalism and underscores the potential exposure to the insurer. For example, in a motor vehicle collision for a basic negligence case, outline negligence. Explain the elements and show the insurer exactly what needs to be proven to be successful. Then cite legal precedent showing jury awards in your jurisdiction with significant damages

Illustration by Kate Dehler

for similar injuries. Make it easy for the insurer. In a premises liability case, outline the standards for premises liability. Show the case law where property owners were held liable for unsafe conditions with similar facts to your case. In a course and scope case, outline the law in a way that is so clear that liability is established. Including short case summaries in your demand helps insurers grasp the value of your claim because they can see what other similar cases settled or obtained verdicts for. Use language that balances professionalism with assertiveness to convey your confidence in the case's merits.

For example, in a recent demand we presented, the liability was clear. It was a basic negligence case. First, we laid out the specific vehicle code:

California Vehicle Code §22350, states:

No person shall drive a vehicle upon a highway at a speed greater than is reasonable or prudent having due regard for weather, visibility, the traffic on, and the surface and width of, the highway, and in no event at a speed which endangers the safety of persons or property.

Next, we applied the facts of the case to the vehicle code. Then, we outlined negligence *per se*:

- (a) The failure of a person to exercise due care is presumed if:
- (1) He violated a statute, ordinance, or regulation of a public entity;
 - (2) The violation proximately caused death or injury to person or property;
 - (3) The death or injury resulted from an occurrence of the nature of which the statute, ordinance, or regulation was designed to prevent; and
 - (4) The person suffering the death or the injury to her person or property was one of the class of persons for whose protection the statute, ordinance, or regulation was adopted."

CAL. EVID. CODE § 669.

Then, we explained how the defendant was negligent *per se*:

Here, (1) Defendant violated California Vehicle Code §22350, (2) this violation directly caused the plaintiff's injuries and damages, (3) the plaintiff's damages were part of what the Vehicle Code was designed to prevent, and (4) the plaintiff was within the scope of people the Vehicle Code was designed to protect—fellow drivers, bicyclists, pedestrians, and any other individuals occupying the road and surrounding areas.

Because Defendant's violation resulted in the severe injuries and damages of Plaintiff, Defendant is presumed to have failed to exercise due care and is thus negligent *per se*.

Making the law clear and concise helps the reader grasp the simplicity of liability to the point where there is no question. Once the insurer and defense counsel see the defendant is liable without question, your demand has more power. This leads to obtaining the desired results for your clients.

Make the medical portion of your demand digestible. Insurance adjusters and opposing counsel may not have medical expertise, so simplifying medical terminology is crucial to ensure your demand is understood and persuasive. Replace technical terms with plain English—for example, "herniated disc" instead of "intervertebral disc protrusion" or "back surgery to relieve nerve pressure causing severe pain" instead of "laminectomy." Instead of "closed reduction of a fracture," say "resetting a broken bone."

You want the insurers and defense counsel to clearly understand what your client went through. Use analogies or comparisons to explain injuries and help the reader understand the severity and impact they have made on your client's life. You want to keep the medical summary concise but strong. Outline the major injuries and surgeries, the timeline, and future recommended care. Summarize complex procedures in a sentence or two, focusing on the outcome and impact on your client's life. Break down medical records into digestible summaries that focus on causation and prognosis. Using charts, diagrams, and photos helps to visually explain injuries and treatments.

Humanizing Your Client

Finally, you want to portray your client's story in a persuasive way. Humanizing your client can make a significant difference in settlement negotiations by bolstering your client's general damages. Personal stories resonate more deeply than dry recitations of facts. To do this, you need to get to know your clients. Meet with your clients and ask them about their daily lives and how life has changed before and after the subject incident. Describe how their injuries have affected their lives, their family relationships, and their future.

This section of your demand should be very personal and unique to each client. If your client was an active hiker and can no longer hike, you need to communicate to the insurer and defense counsel not just that your client cannot hike but also how that is actually affecting your client. Not being able to do something you once did and enjoyed, through no fault of your own, is life-changing. This section should include photographs of your clients before the subject incident to show their normal lives and how their lives are forever changed. This section should be persuasive and sympathetic. You want the insurer and defense counsel to understand that your client will present well to a jury and that you will obtain a verdict greater than the policy limits. This will give you the leverage for maximum

recovery. Incorporate third-party accounts, such as statements from family members or coworkers, to corroborate your client's experiences. For example, if you are claiming loss of consortium, give examples. When a husband and wife live together and the husband used to do half the household chores and no longer can, talk about the effect that has on his wife, as in the following example:

Prior to this incident, Harry used to clean the house, grocery shop, and take out the trash. Now, due solely to the fault of the defendant and through no fault of his own, Harry is unable to perform these daily tasks. These tasks now all fall on Wanda who is overwhelmed. Not only is she watching her husband struggle and caring for him daily, she now has much more responsibility than before.

Explain the impact on the relationship overall. Demonstrate their newfound hardship and the struggles they face due to the fault of the defendant.

Harry and Wanda used to be active. They traveled frequently, were active members in their community, and loved to host their friends and family for dinner parties. Without these activities that once brought them joy, their relationship has no life. They are struggling each day to find happiness. Instead of doing these activities, Wanda now takes care of her husband and does all the household chores herself. This puts an immense strain on their relationship.

Talk about their marriage before and after. You want to elicit emotion in this section. "Harry and Wanda used to be happy and in love. Now, their only focus is healing and trying to obtain the relationship they once had before this unfortunate incident."

Strategies for a Successful Demand Letter

Maximizing recovery through policy limit demands requires a strategic blend of timing, law, clear communication, and compelling storytelling. By making demands at the right stage of your case, using case law effectively, simplifying complex medical information, and humanizing your client, you can position your case for optimal results. Whether you're a seasoned attorney or a newer attorney, these strategies can improve your advocacy and drive better outcomes for your clients while building your reputation. Another incredibly useful tactic is to include a section in your demand about prior results you have obtained. List similar cases and outcomes. This will put you in a stronger position for negotiation. Moreover, be clear about the deadline of your demand (e.g., 30 days) for the insurer to accept.

These simple strategies are summarized below.

First, sending demands at different stages of your case and when new evidence is obtained is a powerful tactic.

Second, use case law to make your demand stronger. Make the law clear and concise. Outline it so there is no question as to liability. Prove each element. For example, in a basic negligence case, break it down into (1) duty, (2) breach, (3) causation, and (4) damages. Each portion should leave no question for the reader: the defendant had a duty, and the defendant breached that duty, directly causing injuries to your client that plague your client and will continue to do so for the rest of the client's life. Each case is unique. Some will have more issues with liability while others will have more issues with damages. Whichever area you

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need to spend more time on to convince the insurer to settle should be the bulk of your demand. For example, if liability is clear-cut, keep it short. Spend time on the damages portion. Or if there are more risks in liability, make it more thorough. If you are sending a demand early on in your case, sometimes sending an email demand is just as effective; whereas, if you are sending a demand further along in litigation, it is beneficial to write a more formal letter.

Third, make the medical terminology easy to understand. Use language that any reader will recognize. The easier to grasp, the better.

Fourth, tell your client's story in a meaningful and effective way. Use photos from before and after. Make it emotional. Show the reader that your sympathetic plaintiff can and will obtain a verdict that far exceeds the defendant's policy limits.

Ultimately, a well-crafted demand letter is a powerful weapon in achieving justice and the maximum recovery for your client. ■

Jonathan Davidi and Brigitta Cymerint can be reached at jdauidi@panish.law and bcymerint@panish.law, respectively.