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Automobile Claims
MEDIATION
Program



Dave Jones, Insurance Commissioner
California Department of Insurance

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Why Use Mediation?

It's an informal, inexpensive and non-adversarial way to resolve your dispute with your insurance company.

One of the responsibilities of the California Department of Insurance (Department), is to help consumers who are having difficulty getting their automobile insurance physical damage claims resolved.

In 1995, pursuant to a newly enacted law, the Department established a pilot program for the mediation of some types of disputes arising out of the Northridge earthquake of 1994 and subsequent earthquakes. In 2001, a law was passed expanding the mediation program to include certain disputes arising out of automobile collision or physical damage coverage. This program uses mediation to bring you and your insurance company together in an informal meeting with a qualified mediator in an attempt to resolve the dispute.

What Is Mediation?

Mediation is a process by which you and the insurance company submit your dispute to a neutral third party (the mediator) that works with both of you to reach a settlement of the dispute. The mediator has no power to impose an agreement on you; only you can decide to settle your case. One of the purposes of mediation is to give you the opportunity to tell your insurance company your perspective regarding the dispute in a joint session.

In private sessions held with each party, the mediator separately tries to promote a candid discussion of the issues and priorities of each party. Gaining knowledge of facts from these meetings, a mediator can use the information learned from each to:

- Reduce the hostility between the parties and help them engage in a meaningful dialogue on the issues at hand;
- Open discussions into areas not previously considered;
- Communicate positions or proposals in more understandable terms;
- Probe and uncover additional facts and the real interests of parties;
- Help each party to better understand the other party's views and evaluations of a particular issue, without violating confidences;
- Narrow the issues and each party's positions, and deflate extreme demands or positions;
- Evaluate the receptiveness for a proposal or suggestion;
- Explore alternatives and search for solutions;
- Identify those issues of importance to each party and those that may be more easily dispensed with;
- Structure a settlement to resolve current problems as well as to meet future needs of the parties.

The mediation is **non-binding**, which means that neither you nor the insurance carrier is legally obligated to accept an offer made by the other party. Even if you do agree to settle your case in mediation, you have three business days to change your mind. If you change your mind within this three-day period, you must inform the mediator of your decision. **Please note:** If you are represented by an attorney at the mediation conference, and the attorney signs agreement documents, the settlement is immediately binding.

Who Is Eligible for this Program?

Any personal automobile policyholder who has purchased physical damage coverage (comprehensive and collision) from their insurance company and has a claim dispute can make a mediation request subject to statutory guidelines covering eligibility. Mediation does not apply to commercial automobile coverage, or to third party liability claims (claims made against another person's insurance company). Disputes qualifying for mediation are those that involve overall claim amounts exceeding \$7500 and where the amount in dispute exceeds \$2000.

Issues Eligible for Mediation

- Extent or Amounts of Damage
- Methods of Repair
- Cause of Damage
- Prior Damage vs. Recent Damage
- Total Loss vs. Repairing
- Value of Total Loss

Issues Not Eligible for Mediation

- Coverage issues - the absence of coverage, and other underwriting issues involving failure to insure, cancellation, nonrenewal and rating issues.
- Legal interpretations of policy provisions and terms.
- The statute of limitations and contractual limitations on filing periods.
- Agent or broker actions, unless there are allegations that the insurer was responsible for the conduct.
- The inclusion of a lender on a claim payment draft.
- Allegations of bad faith, and other demands for extra contractual payments.

How Does the Mediation Process Work?

The First Step – Notification

It is necessary to go through the normal complaint process with the CDI before a referral to the Mediation Program can be made. You can contact the Consumer Services Division for information on filing a Request for Assistance either by phone or online. Please see the “Talk to Us” section for CDI contact information. Once the complaint process has been completed, and if there is no satisfactory settlement of your claim, the CDI will notify the insurer that if the dispute is not resolved, the dispute will be referred to the Mediation Program. The law requires that the company then be allowed 28 calendar days to resolve the dispute, prior to the initiation of the mediation process. Once this time has expired, and if the claim is still unresolved, you will be offered mediation unless a question of eligibility of the particular dispute for the mediation program is raised. If a question of eligibility is raised, it will be reviewed by the Department prior to continuing with the mediation process.

The Second Step – The Request to Mediate

Since mediation is voluntary, you must indicate in writing that you wish to participate in the mediation program. You will be sent a Mediation Election Form to formally request mediation.

The Third Step – Selection of the Mediator

Upon receipt of your signed request for mediation, the Department will appoint a qualified mediator to handle your dispute. A summary of professional qualifications of the mediator will be available for review at the Department of Insurance. Mediators are required to disclose conflicts of interest with respect to you or the other parties to the mediation. It is essential that the parties have complete confidence that the mediator will be fair and impartial. Each party to the mediation may object once to the mediator assigned by the Department. If either party objects, a new mediator will be assigned. A Mediator Objection Form will be provided to you and your insurance company.

The Fourth Step – Pre-mediation Telephone Conference

The mediator will conduct a pre-mediation telephone conference with you and the insurance company's representative. A mutually agreeable date, time and location for the mediation conference will be determined. Dates will also be set for the parties to provide a "Mediation Conference Statement." The mediator will then issue a Mediation Conference Notice to both parties, confirming the arrangements. The mediator will ask if you will be represented by an attorney at the conference.

The Fifth Step - Preparing for the Conference

You will be asked to prepare a “Mediation Conference Statement.” Your statement must summarize the claim and the reason for it, identify the costs or damages sustained, state what you consider a fair resolution of the claim, and identify prior demands and offers, if any. A date will be set at the pre-mediation conference for you to send a copy of your statement to the insurance company and the mediator. The company will also prepare a statement and send you a copy. In addition, the mediator has the right to request that you or the company bring to the mediation additional documentation for review. In preparing the statement, and for the mediation you should:

- Define and analyze the issues involved in the dispute;
- Consider your entire situation (what you can realistically expect, time constraints, available resources, legal ramifications, business or trade practices, costs, etc.);
- Identify your needs and interest in settling the dispute;
- Prioritize the issues in light of your needs;
- Summarize your claim and the reasons for it; determine what possible solutions might satisfy your interest;
- Review the strengths and weaknesses of your case;
- Gather and be ready with facts, documents, complete policy, letters, photographs, and itemized dollar estimates, bills, reports, other items and sound reasoning to support your claims;
- Anticipate the other party’s needs, demands, positions, version of facts, strengths and weaknesses.

The Sixth Step – The Mediation Conference

You should come to the mediation conference prepared with all of the documentation you feel will be necessary to discuss your case and that may have been requested by the mediator.

At the outset, the mediator describes the procedures and ground rules including covering each party's opportunity to talk, order of presentation, decorum, discussion of unresolved issues, and signing of the Confidentiality Agreement. The mediator tries to understand each party's perceptions, interests, and positions. The mediator then acts as a facilitator to keep discussions between the parties focused. The mediator may probe, test and challenge the validity of each party's positions. The mediator will help each party think through its demands, priorities, and views, and deal with the other party's arguments. The mediator helps build

a settlement range within which the parties can assess the consequences of continuing or resolving the dispute. If an agreement is reached, the mediator may summarize the specifics of an agreement and make sure the terms are comprehensive, specific, and clear.

The Seventh Step – The Settlement

When the parties reach an agreement, they should put the terms in writing and execute releases. If no settlement is reached, the mediator may explain the consequences of failure to reach an agreement.

All mediations differ depending on the parties involved and the issues in dispute; your mediation may vary from that described above. Upon completion of the mediation process, a mediation program survey will be mailed to you. The Department requests that it be completed and returned at your earliest convenience to assist with the evaluation of the program.

What Are the Costs and Time Involved?

There is no cost to you. Your insurance company will pay the costs of the mediation. Most conferences will take a few hours. The conference will continue as long as all parties agree progress is being made in resolving the dispute.

What happens If I Decide to Have an Attorney Present?

It is not necessary for you to have an attorney, as this process is designed to be informal and non-adversarial. However, if you elect to be represented by an attorney at the conference, you must notify the mediator during the pre-mediation telephone conference. The mediator will advise the company so it may have its attorney present. An attorney cannot represent your insurance company unless you choose to have an attorney present at the mediation conference.

If I Go to Mediation, Can I Also Go to Court or Participate in Other Dispute Resolution Procedures?

Yes. If the mediation is unsuccessful, you can pursue whatever options were available to you had you not participated in mediation. Remember, mediation is a non-binding process used to reach a mutually agreed upon resolution of the disputed issues.

Will Anything I Say at Mediation be Used Against Me Later if The Mediation is Unsuccessful?

No. The Mediation conference is considered a settlement negotiation and statements made during the conference cannot be used against you in any later proceedings. Everyone is required to sign a Confidentiality Agreement at the beginning of mediation conference.

How Can I Get More Information?

You may obtain additional information regarding this mediation program by referring to California Insurance Code Sections §10089.70 through §10089.83. The Insurance Code is generally located in the reference section of your local library or at a law library in your area. It is also accessible at our Web site: www.insurance.ca.gov.

Insurance Terms and Phrases

ACV – Actual Cash Value (ACV) unless otherwise defined in the policy, is defined in California, as fair market value. The fair market value of an automobile is the amount at which a knowledgeable buyer (under no unusual pressure) would be willing to buy, and a knowledgeable seller (under no unusual pressure) would be willing to sell.

Appraisal – An insurance policy provides for an appraisal process after a loss, on demand of either the insured or the company, in order to determine the amount of loss settlement in the event of a dispute regarding the actual cash value or the replacement cost. Both parties share the costs.

Business Day – Means each day of the week except Saturdays, Sundays, federal and state holidays.

Calendar Day – Means each and every day including Saturdays, and Sundays, federal and California state holidays. If the last day for performance of any act required by the Insurance Code or regulations, falls on a Saturday, Sunday, federal or state holiday, then the period of time to perform the act is extended to and includes the next calendar day which is not a Saturday, Sunday, or federal or state holiday.

Collision – Unless otherwise defined in the policy, is damage to a vehicle caused by collision with another vehicle or other objects, and upset.

Comprehensive – Unless otherwise defined in the policy, is damage to a vehicle caused by reasons other than collision, such as fire, theft, vandalism, and contact with a bird or animal.

Coverage – The scope of the protection provided under a contract of insurance; any of several risks covered by a policy.

Deductible Clause – Specifies the amount of loss which the insured is responsible to pay before benefits from the insurance policy are payable. Some policies will have a separate deductible amount for collision and comprehensive damage coverage.

Depreciation – A decrease in the value of property due to wear and tear or obsolescence.

Extent/Scope of Damage – Components of the automobile possibly affected by cause of loss; body, frame, transmission et cetera.

In Writing – Includes transmission by facsimile (fax).

Policy – Means the written contract between an insured and an insurance company stating the obligations and responsibilities of each party. A policy may include any applications, binders, declaration forms, endorsements, certificates, and any other documents which describe, affect or limit coverage under the policy.

Prior Damage – Unrepaired damage that resulted from an occurrence prior to date of loss of the current claim.

Total Loss – Damage or destruction to an automobile, to the extent that it cannot be repaired or restored to its condition prior to the date of loss, without unreasonable costs to do so. If the repair costs exceed or are within a certain percentage of the fair market value (see ACV) the vehicle will be totaled. Percentages established by the insurers generally range from 70% to 80% of the ACV. An unrecovered stolen vehicle is always a total loss.

Talk to the Department of Insurance

We are the state agency that regulates the insurance industry. We also work to protect the rights of insurance consumers.

Contact the California Department of Insurance (CDI):

- If you feel that an insurance agent, broker, or company has treated you unfairly.
- If you have questions or concerns about health insurance.
- If you want to order CDI brochures.
- If you want to file a request for assistance against your agent, broker, or insurance company.
- If you are having difficulty opening a claim with your insurance company.
- To check the license of an agent, broker, or insurance company.



Call:

Consumer Hotline 1-800-927-4357
TDD 1-800-482-4833



Visit us on the Web at:

www.insurance.ca.gov



Write:

California Department of Insurance
300 South Spring St., South Tower, Los Angeles, CA 90013



Visit us in person:

300 South Spring St., South Tower, 9th Floor, Los Angeles, CA 90013
8:00 AM to 5:00 PM, Monday to Friday, except holidays

The California Department of Insurance

Consumer Education and Outreach Bureau

300 South Spring Street, South Tower, Los Angeles, CA 90013

1-800-927-4357

1-800-482-4833 (TDD)

1-877-401-9550 (CEOB)

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