Insured v. insurer mediation: Practical considerations

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ARTICLE | 06.17.2016

When considering mediating a case between an insurer and its insured, here are some practical considerations to keep in mind.

1. **Why mediate?**

Mediation can be an expeditious and relatively inexpensive way to resolve insurance claim and coverage disputes.

It is a confidential process, which is usually important to insurers, but can also be important to insureds. Confidentiality allows a freer flow of information; parties need not fear having their words or documents used against them. Even if the case is not resolved during the mediation, the process presents an opportunity to observe and assess your opponent and her counsel and may be useful in distilling issues.

The process also gives the insured an audience and the opportunity to tell her side of the story. This is often extremely valuable to insureds who feel they have been wronged by a company that they have paid premiums to and trusted for a number of years.

2. **Who should be at the mediation?**

Of course, the insured and her counsel should be at the mediation. Often other family members, such as a spouse or a parent, may want to attend to support the insured. If this is the case, the insured's counsel should let the insurance company's counsel and the mediator know ahead of time. This allows the mediator to determine whether a disclosure needs to be made and avoids starting the mediation with a "surprise" (which may not be conducive to getting the mediation off to

a positive start).

Who should be there on behalf of the insurance company? If the insurance company wants to send a signal that it is serious about settling the case, it should send a company representative to appear in person at the mediation, instead of participating by phone. While it may not be possible to send in-house counsel or a claims representative in smaller value cases, insurance companies should always strive to do this in complex, high value, and bad faith cases. Depending on the facts, it may be necessary for a reinsurance representative to participate in the mediation as well. Again, it is a good practice to let the mediator and opposing counsel know who is going to attend the mediation ahead of time.

3. **Should the mediator have all attendees meet together?**

Since insurers are generally experienced with mediation and insureds often are not, it is a good idea for the mediator to meet with everyone in an opening session to explain the mediation process and to have everyone acknowledge its confidentiality. Doing so makes clear that everyone is playing by the same rules. This may also be the first time the insured actually meets a live person representing the insurer, so it is important to set the proper tone.