



MARCH 2013

New Jersey's Department of Banking and Insurance Unveils Mandatory Mediation Program for Sandy Claims

On March 26, 2013, New Jersey's Department of Banking and Insurance ("Department") issued a significant new Hurricane Sandy-related order that will affect nearly all insurers doing business in the State of New Jersey. [Order No. A13-106](#) ("Mediation Order") requires insurers to participate in a mediation program ("Mediation Program") at the request of insureds. On March 28, 2013, the Department then issued [Bulletin No. 13-07](#), which sets a deadline of 5 business days from March 28, 2013, for insurers to notify their insureds of the Mediation Program.

A summary of the key features of the Mediation Order and Bulletin follows:

APPLICABILITY

The requirements of the Mediation Order and Bulletin appear to apply to:

- Any "open or unresolved first party insurance claims under homeowners, automobile, and commercial insurance policies for losses arising from Storm Sandy" in New Jersey except for those described below under "Exceptions: When Mediation Is Not Required." (The term "unresolved" is not defined);
- All insurers authorized or admitted to transact business in New Jersey and the New Jersey Insurance Underwriting Association. (Surplus lines insurers and risk retention groups may opt to participate in the Mediation Program on a case-by-case basis. They must make this decision within five (5) business days of receipt of the notice.)

NOTICE REQUIREMENTS

- An insurer must send written notice within five business days of March 28, 2013, informing all eligible insureds regarding the opportunity to request a mediation.
- In the event that a claim is filed or reopened after March 26, 2013, the insurer must provide notice of the Mediation Program with any offer of settlement or denial (in whole or in part). In addition, if the matter remains open for 60 days without a settlement offer or denial, the insurer must provide notice of the mediation no later than 60 days from the date the claim was filed or reopened.

- Content of the Notice: The Bulletin provides a sample notice letter. The sample notice letter advises the insured that the insurer must pay for the cost of the mediator and the program administration unless the insured does not appear for the mediation, in which case, the costs of the mediation and rescheduled mediation are shared between the parties.

TIMING OF THE MEDIATION

- The insured provides its request for mediation to the American Arbitration Association ("AAA") through contact methods identified in the Bulletin. Within three business days of receipt of a request to mediate from an insured, the AAA shall notify the insured and insurer whether the request for mediation is rejected or accepted (based on the criteria for which claims qualify for mediation). If an insurer receives a mediation request from an insured, it must forward the request to AAA by e-mail or fax within one (1) business day after receipt.

- All mediations shall be scheduled no later than 30 days after receipt of the request for mediation unless both parties agree in writing to an extension of time.

- Mediations must be scheduled to minimize travel for policyholders.

CONDUCT OF THE MEDIATION

- All mediations are nonbinding, and all statements made during a mediation are confidential (except if there is an investigation of insurance fraud).

- Mediations shall be held in person, except that video-teleconferencing mediations are permitted if all parties agree and the AAA can facilitate it.

- A party wishing to be represented by counsel or a public adjuster at a mediation must give five (5) days' notice of the representation to the opposing party and AAA or the mediator.

- Insurer's representative: The representative participating on behalf of the insurer must:

- Be knowledgeable about the claim and policy provisions;
- Have authority to settle the full amount of the claim;
- Bring a copy of the policy and the entire claim file to the mediation;
- Have authority to disburse the settlement amount immediately at the conclusion of the mediation conference. If the insurer cannot abide by this requirement because of the need to issue a computer-generated check, then the insurer will be provided 3 business days after the conclusion of the mediation to issue the check

- An insurer is obligated to pay AAA the entire fee for the mediation unless the insured does not appear for the mediation, in which case, the costs of the mediation and rescheduled mediation are shared between the parties.

EXCEPTIONS: WHEN MEDIATION IS NOT REQUIRED

- An insurer is not required to participate in a mediation if:

- The insurer has a reasonable basis to suspect fraud and has referred the matter to the Office of the Insurance Fraud Prosecutor in the Department of Law and Public Safety;
 - The amount in controversy is less than \$1,000;
 - The loss is not related to Storm Sandy;
 - The denial is based on the nonexistence of the policy at the time of the loss.
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If we can be of any assistance to you, please do not hesitate to contact us.

Wystan M. Ackerman
wackerman@rc.com
860-275-8388

John P. Malloy
jmalloy@rc.com
860-275-8337

Daniel F. Sullivan
dsullivan@rc.com
401-709-3326

Deborah A. Vennos
dvennos@rc.com
860-275-8351

Gerald ("Kip") Dwyer
gdwyer@rc.com
860-275-8331

Eugene P. Murphy
emurphy@rc.com
941--906-6856

Rhonda J. Tobin
rtobin@rc.com
860-275-8327

Stephen E. Goldman
sgoldman@rc.com
860-275-8255

Rebecca Levy-Sachs
rlevy-sachs@rc.com
941-906-6854

Gregory P. Varga
gvarga@rc.com
860-275-8230

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