



GOVERNMENT OF PUERTO RICO
Office of the Commissioner of Insurance

January 11, 2019

RULING LETTER NO. CN-2019-245-D

TO ALL INSURERS THAT WRITE PROPERTY AND CASUALTY INSURANCE IN PUERTO RICO, THEIR GENERAL AGENTS, AUTHORIZED REPRESENTATIVES, PRODUCER, ADJUSTERS, AND THE PUBLIC AT LARGE

EXPEDITED MEDIATION PROCESS TO RESOLVE DISPUTED CLAIMS RELATED TO HURRICANES IRMA AND MARIA

Dear Sirs and Madams:

Our legal system provides alternative conflict resolution mechanisms for insurance claims. Furthermore, the Puerto Rico Supreme Court fosters as public policy in the Judicial Branch for the use of alternative conflict-resolution methods as alternative methods from the traditional system for resolving disputes in the most efficient, swift, and economical manner.

Accordingly, Section 2.030(16) of the Insurance Code, 26 L.P.R.A. § 235(16), establishes that the Commissioner of Insurance may refer the parties that have a dispute before their consideration to submit to an alternative process for the resolution of claims. Under this Section, the Commissioner created a mediation process governed by Rule 79 of the Regulations of the Code of Insurance of Puerto Rico, Regulation No. 6890, *Regulation for the Conflict Mediation Program* (hereinafter, the “Mediation Regulation”).

In response to the high number of complaints related to the damage caused by Hurricanes Irma and Maria in Puerto Rico, the Office of the Commissioner of Insurance (“OCI”), through this Ruling Letter, is implementing an expedited mediation process for the resolution of claims. The purpose is having the mediation process for disputes arising from claims related to Hurricanes Irma and María be resolved in a shorter time than the normal mediation process and in a way that is fair and reasonable for the parties. This Ruling Letter is supplemental to the provisions of the Mediation Regulation but does not substitute or supersede that Regulation.

The following are the guidelines for these expedited mediation processes.

I. MEDIATION PROCEDURE

A. NATURE OF THE MEDIATION

The mediation process established through this Ruling Letter will be governed by the provisions herein. In addition, the provisions of the Mediation Regulation will be



applicable insofar as they are not incompatible with this letter. Like the mediation contemplated in the Mediation Regulation, this method is informal, voluntary, and non-binding. It includes discovery of evidence that concludes with a Mediation Report.

Mediation does not limit the rights of an insured or claimant (hereinafter, “claimant”) to resort to the courts, nor does it prevent a claimant from requesting an investigation or adjudicatory proceedings of the OCI.

B. MEDIATION REQUIREMENTS

The following conditions must be present in order for a claim to be referred to mediation:

1. That there be a controversy between the claimant and the insurer regarding the coverage of a policy or the amount being claimed;
2. No legal proceedings may have been brought before a Court of First Instance with regard to the claim. If legal proceedings have been initiated, it will be necessary for the Court, whether on the Court’s initiative or at the initiative of either of the parties, to authorize the referral of the case to the mediation process; and
3. If there is a claim that has been submitted to the OCI and both parties agree to submit to a mediation process, the Commissioner or the Investigations Division of the OCI may evaluate the procedural situation of the claim and, if it is deemed appropriate, the referral of the claim to mediation will be authorized. In that case, the parties must amend the claim request and the answer, so that in their stead there may be a notice of dispute in compliance with the requirements established in this Ruling Letter.

C. INITIATION OF THE PROCESS

The claimant shall submit a notice of dispute (“Notice of Dispute”) to the OCI that includes the following:

1. A detailed statement of the controversy including all of the relevant facts;
2. Identification of any provision of law that the claimant believes to have been violated by the insurer, including provisions of the Insurance Code, regulations, Ruling Letters or Circular Letters, and/or jurisprudence;
3. Identification of the name of the insurer and the number of the policy involved in the controversy; and
4. An itemized estimate of the damages experienced by the claimant, including all of the amounts requested to be itemized or covered under the policy and costs associated with the claim.

The insurer shall submit the answer to the Notice of Dispute of the claimant (“Answer to the Notice of Dispute”) within ten (10) days to be counted from the date of said notice.

The Answer to the Notice of Dispute shall contain the following:

1. A detailed response identifying the facts which the insurer agrees with and those that it does not accept, as well as any additional fact that may be relevant to the disputed claim;
2. A statement confirming whether in effect it is the insurer that issued the policy related to the claim and identifying the number of the policy that was issued;
3. A statement of any amounts that may have been paid to the claimant for the claim, including a detailed statement of the coverage under the policy for which payment was made;
4. If the insurer has any dispute regarding coverage under the policy, the insurer shall include a statement identifying the clauses or provisions of the policy and/or expert reports supporting the insurer's position;
5. A detailed explanation on the calculation used for the adjustment of the damages submitted by the claimant; and
6. A statement of the limits and deductible amounts included in the policy and that are applicable to the claim.

Within fifteen (15) days to be counted from the date of the submission of the Answer to the Notice of Dispute, either party or the parties jointly may submit a request for a Mediation Order (the "Request for Mediation Order"). Likewise, either party or the parties jointly may propose a mediator.

The OCI will issue the mediation order (the "Mediation Order") within fifteen (15) days from the date of the submission of the Request for Mediation Order. The Mediation Order will contain the following:

1. The name of the appointed mediator:
 - a. If the Parties agreed on a particular mediator, the OCI will appoint the mediator selected by the parties; or
 - b. If the parties do not reach an agreement on the mediator to be appointed, the OCI will appoint one from its list of mediators or from the list of the Alternative Resolution Methods Bureau of the Judicial Branch or the United States District Court for the District of Puerto Rico.
 - c. The OCI will identify a deadline for completing the mediation, which will be within ninety (90) days of the date of the Mediation Order, unless there is just cause for extending the deadline.
 - d. The fees of the external mediators, who are not employees of the OCI, during the mediation process will be assumed in equal parts by the claimant and insurer.

D. APPOINTMENT OF THE MEDIATOR

1. The mediators to be used shall be duly qualified by the Alternative Resolution Methods Bureau of the Judicial Branch of Puerto Rico (the “Bureau”), by the United States District Court for the District of Puerto Rico, or by the “American Arbitration Association” (AAA), JAMS, ARIA. U.S. or other similar dispute-resolution organization.
2. The parties may select the mediator, by mutual accord, from the Register of the Alternative Resolution Methods Bureau of the Judicial Branch or the United States District Court for the District of Puerto Rico. The parties may also appoint a mediator who is authorized by any of the entities mentioned in the foregoing paragraph.
3. If the parties do not reach an agreement on the selection of the mediator, within fifteen (15) days of issuing the Mediation Order, the Commissioner, in the use of the Commissioner’s discretion, may appoint an employee of the OCI who is a certified mediator, or if none is available, an external mediator.
4. No person may act as a mediator in a controversy in which he or she has a personal or financial interest or whose relatives have such an interest of if he or she could be in conflict with the interests of the parties in the mediation process. The mediator shall have the duty of recusal in any process where there is a conflict of interest factor that could affect his or her impartiality.

E. INSPECTION OF THE AFFECTED PROPERTY

The insurer may carry out an inspection or re-inspection of the property that is the subject of the claim by submitting an Inspection Notice (“Inspection Notice”), within fifteen (15) days after the date of the Mediation Order. The inspection shall be carried out within fifteen (15) days of the date of the Inspection Notice. The inspection of the property or properties shall be completed within ten (10) days from the date of the initiation of such inspection.

The Inspection Notice shall state:

1. The scope of the inspection;
2. Whether there will be tests performed by engineers or experts, and if that is the case, a full protocol for such tests;
3. Persons that will participate on behalf of the insurer and/or its affiliates;
4. Proposed date and time for the inspection.

The claimant or the claimant’s authorized representatives may be present during the inspection. If the inspector drafts a report, a copy of the report shall be notified to the claimant within fifteen (15) days of the date of the inspection of the property.

F. DISCOVERY OF EVIDENCE

The discovery of evidence shall be completed within forty-five (45) days of the date on which the OCI issued the Mediation Order.

The claimant shall produce evidence that is relevant for the claim, including, but without limitation, the following documents:

1. Receipts and invoices of the repairs;
2. Contractor's proposals or estimates;
3. Estimate for repairs of the property;
4. Financial documents used for any calculation of interruption of business activities or loss of income;
5. Reports on the interruption of business or loss of income;
6. Photographs;
7. Engineering or expert reports;
8. Evidence of expenses incurred to mitigate water and/or flood damage, if applicable;
9. Any report of assessment or appraisal of the damage to the property made after the loss;
10. Correspondence and/or communications with the insurer; and

The insurer shall produce evidence that is relevant for the claim, including, but without limitation, the following documents:

1. Certified copy of the complete record of the claim;
2. If an independent adjuster was used, the full report of such adjuster;
3. Engineering or expert reports;
4. Estimates made by the adjuster or contractor;
5. Statement of payments made, if any;
6. A copy of the insurance policy;
7. A report drafted or commissioned by the insurer certifying the condition of the property before the event;
8. Record of payments; and
9. Offers of payment made.

G. MEDIATION MEETING

The parties or a representative with the authority to reach a final agreement, shall be present at the mediation meeting. The determination of who will be considered to be an authorized representative of a party depends on the following:

1. In the case of individuals, this means the party him or herself. If the property is owned under a community property scheme, it will be sufficient for one of the co-owners to be present, provided that he or she has the authority to reach a final agreement on the claim.

2. With regard to the claimant under an insurance policy, this means an employee, officer or director with authority provided in a corporate resolution to reach a final agreement and bind the claimant without the need for additional approval.
3. In the case of the insurer, it means an employee, officer or director with the delegated authority to reach a final agreement and bind the insurer without the need for additional approval.
4. If the parties are represented by an attorney, the attorney may attend the mediation.

The mediator shall have the discretion to structure the mediation process as she or he sees fit. All mediations shall include the aforementioned discovery of evidence between the parties. Any expert report that is designated as confidential may only be used during the mediation and may not be used in other proceedings. Nevertheless, the party that prepares an expert report for the mediation process may consent to having such not be treated as being confidential and the report may be used in other proceedings related to the claim.

H. MEDIATION REPORT

The mediator shall submit the Mediation Report within fifteen (15) days of the date on which the mediation was held and may require that one or more parties prepare a draft of the report for review and possible adoption. If the dispute is resolved in the mediation, the mediator's Report shall merely inform the OCI that the dispute has been resolved.

The Mediation Report shall include the documents exchanged between the parties, the mediator's opinion, and the inspection report of the property, if such was drafted.

In the event that the dispute is not resolved through the mediation, the Mediation Report main contain findings of fact, recommend a form of resolution, and provide the grounds for the recommendation.

If the mediation was not completed within the term established in the Mediation Order, the mediator shall provide an explanation of the reasons for the delay and make a recommendation to the OCI as to whether a fine should be levied on the party or parties that are responsible for the delay.

Within ten (10) days from the date of the submission of the Mediation Report on a full agreement on the claim, the parties shall comply with the agreement and submit evidence to the OCI so that the dispute may be dismissed.

If the parties have not reached an agreement at the end of the term established for the mediation process, the controversies or disputes regarding the claim that are pending resolutions shall be decided through the adjudicatory processes established by the OCI.

I. CONFIDENTIALITY AND PRIVILEGE

The provisions on confidentiality and privilege of the Mediation Regulation that are not incompatible with the provisions of this letter shall be applicable to the mediation procedures established in this Ruling Letter.

II. SCOPE AND EFFECT

This mediation process is voluntary for the parties. This Ruling Letter is not intended to be nor should it be interpreted as being a waiver of rights or defenses of the parties to resort to the courts or that the controversy be resolved through the adjudicatory procedures established by the OCI. The provisions of this Ruling Letter will enter into effect immediately as of the date of the letter.

Very truly yours,

Javier Rivera-Ríos, LUTCF
Commissioner of Insurance