

MEDIATION OF AN INSURANCE CLAIM
HAVING A COVERAGE QUESTION
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Insurance claims occur regularly in all types and sizes, particularly "third party" claims involving liability insurance. Most of the time there is not an issue concerning liability coverage for the covered event. However, occasionally there is. How can the parties mediate a case when there is uncertainty about the insurance coverage? That is the subject we will address.

I) What is the status of the coverage question issue?

A) What is the basis for the coverage question?

B) Has the insurer already taken a position of "no coverage?"

C) Has there been a declaratory judgment action filed?

D) If a declaratory judgment action has been filed, who are the parties to the "Dec" action?

II) Evaluation of the liability issues is critical.

A) Evaluation of the likelihood of success by the insurer in avoiding coverage.

B) Evaluation of the underlying tort claim - what is the likelihood of liability?

C) If the insurer denies coverage without a Dec action, what is the exposure to the insurer down the road? Possible "bad faith" actions?

III) Planning for a successful mediation

A) Getting all parties together for the mediation.

B) Building "Chinese walls" when necessary.

C) Settlement of the case as a whole.

D) If you cannot settle the case as a whole, what parts can be settled and what must remain to be litigated?