



COMMISSIONER OF SECURITIES AND INSURANCE

Troy Downing
Commissioner

Office of the
Montana State Auditor

ADVISORY MEMORANDUM

To: ALL INTERESTED PERSONS

From: TROY DOWNING

Commissioner of Securities and Insurance, Montana State Auditor

Date: May 13, 2024

Advisory Memorandum Regarding Loss Mitigation Claim Denials

The Commissioner of Securities and Insurance, Office of the Montana State Auditor (“CSI”) has noticed a marked increase in consumers complaining that property and casualty insurers are engaging in unreasonable, after-the-fact adjusting of the mandatory, exigent mitigation these insurers require for claims such as water damage. This practice has increased over the last five years as fewer insurers provide on-site claims adjusters, thereby eliminating communication between homeowners, remediation contractors, and the insurer prior to or concurrent with the mitigation work.

Complainants report that insurers are requiring immediate mitigation without immediate support in adjusting the claim. When the remediation contractor and the insurer disagree after the work is complete, the consumer is deemed liable for any unpaid portion of the claim. In some cases, remediation companies are also taking advantage of this communication breakdown to bill unreasonable fees. In either case, the result is the same: Montana consumers—especially elderly homeowners—are left to foot the bill through no fault of their own.

The CSI interprets Montana’s Unfair Trade Practices Act (“UTPA”) to prohibit insurers from requiring immediate mitigation without immediate adjustment services. The UTPA at § 33-18-201, MCA, provides in relevant part that “[a] person may not, with such frequency as to indicate a general business practice, do any of the following:”

...

(6) neglect to attempt in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear;

...

840 Helena Avenue, Helena, Montana 59601
(main fax) 406.444.3413 | (securities fax) 406.444.5558
(insurance consumer services fax) 406.444.1980 | (legal fax) 406.444.3499
(phone) 800.332.6148 *or* 406.444.2040 | (email) csi@mt.gov | (web) www.csimt.gov

(13) fail to promptly settle claims, if liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage; or

(14) fail to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

These provisions make clear that any duty the insurer places on its insureds to expedite mitigation of damages for which liability to the insurer has become reasonably clear concurrently triggers the insurer's duty to expedite adjustment of the claim. Specifically, any insurer who requires their insured to engage in immediate mitigation of damages must provide the insured with a reasonable opportunity to obtain pre-approval of a mitigation estimate or, at the very least, concurrent adjustment, as circumstances may reasonably require. The CSI will carefully analyze any case in which an insurer engages in after-the-fact adjusting of mitigation work to ensure compliance with this standard.

Commissioner Downing urges anyone who knows of insurers unreasonably or unfairly denying or limiting claims for mitigation to make a report to this office. A report can be made online at https://csimt.gov/insurance-complaints-fraud_1/, or by calling the Insurance Consumer Services Bureau at (406) 444-2524, or by emailing ics@mt.gov.

This advisory memorandum is intended to inform the public and industry as to the CSI's interpretation of statutes and administrative rules within the scope of the CSI's enforcement authority as of the date of this memorandum. The CSI does not limit its authority under applicable law through this memorandum and reserves the right to reconsider this interpretation at any time. The CSI encourages interested persons to consult with independent legal counsel for guidance on the application of this advisory memorandum to specific factual circumstances.