

Hollywood Mediator: Free Food Tomorrow with Jeff Kichaven [PODCAST]

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On this episode of Covered, hosts [Vince Morgan](#) and [Claire Cahoon](#) discuss the world of insurance mediation with [Jeff Kichaven](#), one of California's leading mediators of insurance coverage.

How did you get drawn to mediating insurance coverage disputes?

I love mediating insurance cases. While it's true that I mediate many kinds of cases, it's something different every day. The insurance cases have an intellectual challenge to them. I like the people who tend to be involved in them. The nature of the issues is fascinating because they deal with cutting-edge situations in society.

I got into mitigation in the mid-1990s. I graduated from law school back in 1980. When I was in my late 20s, I thought that was just great. I could vent this kind of swashbuckling side of my personality. As I got older, got married and had kids, being on that razor's edge between perfection and disaster got to me. I enjoyed the litigation practice less and less as time went on.

But it took me a long time to work up the courage to try something else. It was not an easy transition. It started when the team had an intractable business controversy. We were representing a bank. There were some lenders, some borrowers suing the bank in what was called lender liability litigation back in that era. This case was going on and on for a couple of years. The bank wanted to settle it, but our team couldn't figure out how. I knew someone, a man named Richard Nolan, who was a great inspiration in my career. Richard Nolan had become a mediator. He couldn't mediate this dispute because he and I were friends, but he referred me to another mediator, Bob Hotis, who was just about the only professional mediator in Los Angeles, and our team hired Bob Hotis to mediate this case.

All of a sudden, in about six hours, we settled this completely intractable, nasty piece of litigation. I thought, "wow, this is quite something. I should learn more about it." So, I decided I would sign up for mediation training. Looking back at it now, it's almost comical how hard I try to avoid playing the role of the mediator in the role plays. That was not for me. I wanted to figure out how to negotiate and get better results. And for about a year, I dabbled at mediation — one foot in mediation, one foot in

litigation.

The field was growing in the mid-1990s. So, I decided the time was right, and I planted the flag and burned the ships behind me. I was no longer a litigator. I was a mediator. I stared at the telephone for a while and realized that staring at it was not going to make it ring any more than it was going to make it levitate. I started getting out there and promoting myself as a mediator. And slowly but surely, one brick at a time, you build the wall. And 26 years later, I look back at it and think it was one of the best decisions I ever made.

Is there some particular kind of coverage dispute that you find to be easier to settle and other kinds that are more challenging?

They're all challenging. The fact that a case is coming to mediation indicates that it's kind of a close case. If the case were easy to win, you would just go out and get your summary judgment and win the case. Or file that four-page motion to dismiss and have the judge spank the thing right out of there if it were easy. The fact that you're coming to mediation in the first place indicates that there are some challenges, and it doesn't matter whether it's a property case or general liability policy. Those cases all have one important thing in common; they all involve human beings. Human beings deal with situations that are important to them.

In every case, you have to dig in. You have to find out what's going on behind the scenes. As they say in Hollywood, where I live, what's the back story? What's the personality question? What are the people's issues going on here?

When a mediator works with lawyers to figure this out, they can help clients consider settlement possibilities that might not have settled before and that might not have been considered before. It's working together to consider new and different possibilities and invent those new and different possibilities many times. That's the benefit of working collaboratively in a mediation in any context.

Have you seen an evolution of how people go about trying to resolve these kinds of cases?

The most significant change I've seen is how technology has been used in mediation over the past year and a half. Almost all mediations are taking place online, mainly on the Zoom platform and some other platforms. Who knows what the future will hold.

I can tell you, though, that this has had a profound impact on mediating insurance cases. For one thing, it makes the cases easier to convene because we do not require people to travel halfway across the country to Texas, where the client is, or across the country to California, where the mediator is. I now have mediations with people from every continent in the world and insurance executives from all over the country. And it benefits policyholders when the real decision-makers from the insurance carriers have easier access to the mediation.

Insurance carriers will often say they are sending a real decision-maker to the mediation, except when everyone gets to the mediation, they find out that the real decision-maker has to call the actual, real decision-maker who may be in Hartford, Connecticut, New York City, London or who knows where. Now you get the real decision-maker and another person who had not kept up with the dynamics of the discussion. You'll have to call at the end of the day and ask that person for more money. That's a tough call to make. It's become easier, and it benefits the policyholders and the

carriers when these people can participate more easily, which creates more settlements it creates settlements with which people are more satisfied because they know that they've spoken to the right person on the policyholder side or the third-party plaintiff side.

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