



## ADMINISTRATIVE RULES OF MONTANA

### 17.58.337 THIRD-PARTY DAMAGES: PARTICIPATION IN ACTIONS AND REVIEW OF SETTLEMENTS

- (1) Any owner or operator who is sued for damages resulting from a release shall notify the board of the suit in writing within 15 days of being served with a summons and complaint. Within 45 days of being served by the summons and complaint, the owner or operator shall also:
  - (a) advise the board in writing if any insurer is defending the owner or operator, and if so the name of such insurer;
  - (b) provide the board with a complete copy of any insurance policy covering any part of the release or the damages resulting from the release, including all addendums, riders, and endorsements; and
  - (c) provide the board with a copy of the summons, complaint, and any answer or answers to the complaint.
- (2) Any owner or operator who, prior to litigation, is advised of a claim by a third party, or enters into negotiations with a third party who claims to have been damaged by a release, or who receives a demand for payment of damages to a third party who claims to have been damaged by a release, shall notify the board of such claim, demand, or negotiations within 30 days, and at that time shall provide the board with a copy of any such claim, demand, or negotiations that have been reduced to writing.
- (3) In addition to the notice requirements of (1) and (2), the owner or operator shall provide the board with status reports once every three months after the notice is given, setting forth the status of investigation, discovery, motion practice, and negotiations for settlement.
- (4) The board may review the conduct of any such lawsuit or claim, and any negotiation to settle the lawsuit or claim, and may review any pleadings, discovery, investigation, and papers documenting settlement, or negotiations for settlement, of the suit. The owner or operator shall provide copies of any record or document requested by the board to assist the board in its review pursuant to this section. The board will not assume any legal costs incurred by the owner or operator, but may appear and participate in discovery or trial proceedings or settlement negotiations that bear on the determination of a third party's claim for plaintiff's damages caused by the release. If the parties wish to employ a judge pro tempore under the provisions of 3-5-113, MCA, or a settlement mediator, and consult with the board in the selection process, the board may participate in the compensation of the judge pro tempore or settlement mediator.
- (5) Unless the board has been provided with a judgment or an executed settlement agreement that has finally determined an owner or operator's liability to a third party for payment of damages caused by a release, the board may require that a third party claiming such injury to property or person obtain at their own expense and provide to the board in writing a property appraisal or

report of medical examination. Such appraisals or examinations are more likely to be required if the owner or operator has not kept the board apprised of the course of litigation or settlement negotiations as required under this rule. If the owner or operator does not keep the board apprised of the course of litigation or settlement negotiations as required by this rule, the board may refuse to reimburse any portion of a settlement or judgment pursuant to this section, and the board may deduct from any reimbursement owed its costs for hiring an independent physician, property appraiser, or claims adjuster under this rule.

- (6) The board may review any settlement papers or negotiations, including confidential settlement mediations or conferences, for the purpose of determining the dollar amount of bodily injury or property damages actually, necessarily, and reasonably incurred by third parties which, if required to be paid by the owner or operator, would be considered eligible costs caused by a release, provided that the board shall comply with any confidentiality requirements imposed by the court or the mediator, unless there is a compelling state interest to do otherwise.
- (7) "Property damage," as defined in 75-11-302, MCA, will be measured by the board in terms of diminution of market value, unless the costs of repairing damage are less than the diminution of market value.
- (8) Failure to comply with any provision of this rule shall be considered noncompliance subject to 75-11-309(3)(b)(ii), MCA.

**Authorizing statute(s):** 75-11-318, MCA

**Implementing statute(s):** 75-11-309(1)(g), MCA

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**History:** NEW, 1990 MAR p. 516, Eff. 3/16/90; TRANS, from DHES, 1996 MAR p. 3125; AMD, 1999 MAR p. 2279, Eff. 10/8/99; AMD, 2011 MAR p. 377, Eff. 3/25/11.