



## Arbitration Forums, Inc. Rules

Effective February 1, 2010

The following rules are made and administered by Arbitration Forums, Inc. (AF) under the authority of Article Fifth (a) of the various Arbitration Agreements. As a condition precedent to using these rules, the parties should attempt to settle the subject dispute prior to filing arbitration. The filing company, at a minimum, must list the correct and current representative's address, insured's name, and claim file number (or policy number if claim file number is unknown) for the adverse party(ies). Failure to list current and correct information may cause a filing to be closed or a decision to be voided.

### SECTION ONE Jurisdiction

1-1 The Agreements limit jurisdiction to accidents or losses occurring in the United States, Puerto Rico, and the U.S. Virgin Islands. For PIP Arbitration, jurisdiction conforms to the statute or endorsement giving recovery rights in the state in which the accident occurred (*the program does not apply to claims arising from an out-of-state accident*). For Medical Payments Arbitration, compulsory arbitration is applicable in states where medical payment subrogation claims are permitted by statute or judicial decision.

1-2 When a matter that should have been filed in arbitration under one of the Agreements is placed in litigation, the party filing in litigation must dismiss/discontinue the suit within 60 days of notification of the adverse party's signatory status. If the applicable statute of limitations has expired, the filing of suit will toll the statute of limitation for this 60-day timeframe. If the case is filed after 60 days, the expiration of the statute of limitations may be asserted as an affirmative defense. If suit is not dismissed/discontinued, the party seeking removal may be entitled to statutory interests and all costs and expenses the court deems appropriate.

1-3 Compulsory arbitration is applicable to a maximum of

- \$100,000 Company Claim Amount in the Automobile, Medical Payment, Property, and Uninsured Motorists Forums.
- \$250,000 Contribution Sought Amount in the Special Arbitration Forum.
- The limit governed by the statute or endorsement creating the subrogation or direct-action recovery right in the PIP Forum.

(a) AF considers claims for separate parties arising out of the same accident, occurrence, or event as separate claims.

(b) AF considers a claim and companion claim(s) for different lines of coverage as separate claims.

(c) The legal fees are not considered part of the program limit unless the policy limit includes legal fees.

(d) The deductible is not included as part of company claim amount.

1-4 A responding company may add other members or consenting nonmembers and/or argue the negligence of the unnamed party(ies). Upon receipt of the answer, the filing company may amend its application to add other members or consenting nonmembers or withdraw its application to pursue recovery by other means. If the filing company allows the case to proceed to hearing, it thereby agrees to accept the award, if any, against any responding company and waive its right to pursue the balance directly from any other party.

## **SECTION TWO**

### **Procedure**

2-1 The filing company initiates arbitration by

- filing via AF's Web site or
- mailing a completed application and Contentions Sheet to AF and any responding companies.

For cases filed via AF's Web site, AF will forward a copy of the application and Contentions Sheet, as well as any subsequent amendments, to the responding parties with notification of the hearing date.

For cases not filed via AF's Web site, the filing company must mail a copy of the completed application and Contentions Sheet, as well as any subsequent amendments, to AF and the responding companies.

All amendments, reschedule requests, and evidence submissions must be received by the Materials Due Date posted by AF.

Special Arbitration should be filed within 180 days of payment to the claimant or the delay may be asserted as an affirmative defense if it can be shown to have caused prejudice to the party raising the defense.

2-2 The responding company may answer

- via AF's Web site or
- by mailing a copy of the completed application and its Contentions Sheet to AF and all involved parties.

For answers submitted via AF's Web site, AF will notify the filing company electronically or mail a copy to it, depending on the filing method used. The answer and any amendments must be received by the Last Online Response date posted by AF to allow sufficient time for mailing, when needed.

For answers not submitted via AF's Web site, the responding company must mail a copy of the completed answer and Contentions Sheet, as well as any subsequent amendments, to AF and the filing company and any other responding companies, if applicable.

All amendments, reschedule requests, and evidence submissions must be received by the Materials Due Date posted by AF.

If the responding company has a counterclaim, it must include it when it responds online or check the box on the application clearly showing a counterclaim is being filed if it responds via mail. Regardless of the manner in which it files the counterclaim, it must be received and heard with the original arbitration case or recovery is barred. The sole exception is where the responding company shows through documentary evidence that payment to its insured was made after the Materials Due Date for the original filing's hearing date or anytime thereafter. Filing a counterclaim is the only way a responding company may collect its damages from the filing company.

A decision will be voided and a new hearing scheduled if

(a) one of the involved parties asserts within 30 days of the decision publication date that it did not receive an adverse party's final application/answer and/or contentions sheet by the Materials Due Date, and the adverse party cannot prove timely delivery (excludes cases filed or responded to via AF's Web site) or

(b) one of the parties asserts and proves within 30 days of the decision publication date that AF received its documents but same were not presented to the arbitrator at the hearing.

2-3 If seeking legal fees, a company must list these amounts on the application or they are waived; the justification for them must be supported in the contentions; and the supports listed and submitted as evidence.

2-4 The parties must raise and support affirmative pleadings or defenses in the *Affirmative Pleadings/Defenses* section of the Contentions Sheet or they are waived. If a denial/disclaimer of coverage is being pled (see definition of Denial/Disclaimer of Coverage (b)), the case will be administratively closed as lacking jurisdiction so long as a copy of the denial/disclaimer of coverage letter to the party seeking coverage for the loss (i.e., alleged negligent party) is provided as part of the evidentiary material submitted. If no such letter is provided or where the issue concerns concurrent coverage (Article First (b), Special Arbitration Agreement), the case will proceed to hearing wherein the arbitrator(s) will consider and rule on the coverage defense.

2-5 If a responding company disputes damages, it must present all damages arguments and disputed dollar amounts, if known, in the Damages section on the Contentions Sheet. Damages arguments raised in any other section of the Contentions Sheet will not be considered by the arbitrator. This includes, but is not limited to, issues such as repair and/or rental amounts, causation, and partial exclusions.

2-6 All companion claims will be heard together if

(a) they are filed together or related by the parties if filed online or

(b) the parties notify AF of the relationship prior to one of them being heard.

2-7 The filing company must immediately withdraw its application online if the dispute is resolved or immediately notify AF. Upon notification, AF will withdraw the case from arbitration.

2-8 If the responding company pleads an affirmative defense and AF or the arbitrator closes the case based on no jurisdiction and it is subsequently discovered that arbitration was properly filed, the filing company may re-file the case in arbitration. The responding company will reimburse the filing company for all reasonable legal expenses and court costs resulting from the improper objection to jurisdiction as well as the additional arbitration filing fee.

2-9 Each party may be granted one reschedule of the hearing date if requested

- (a) by the Materials Due Date or
- (b) prior to three business days before the hearing, so long as the party has already submitted its documentation pursuant to Rule 2-1 or Rule 2-2.

AF will notify all parties of the new hearing date. Additional reschedules may be granted with consent of all parties; AF will charge the requesting party a fee for any additional reschedule requests.

2-10 Each party may request a deferment of the hearing and must provide the basis for the request in the Deferment Justification section of the Contentions Sheet. There will be no fee for an initial deferment request.

In the Automobile, Property, and Special Forums, deferment requests by the filing company will be automatically granted. When a responding company requests a deferment, the case will proceed to hearing on the scheduled date. The arbitrator(s) will consider the validity of the request. If the request is upheld, the case will be deferred for one year, unless, in the interim, the requesting party withdraws its deferment request. If the request is denied, the arbitrator will continue to hear the disputed issues. Any subsequent deferment requests will follow the above procedure; AF will charge the requesting party a fee for subsequent request(s).

In the Medical Payment and PIP Forums, the deferment request will be automatically granted. An adverse party may challenge the request if it believes a deferment is not warranted. If challenged, the case will be scheduled for hearing and processed as above.

An affirmative defense is waived if it is available when the deferment request is made but is not asserted. This does not prohibit the responding company from subsequently asserting an affirmative defense at the time it becomes available.

2-11 For product liability cases, reasonable accommodations should be made for the inspection of the alleged defective product(s). Failure to do so may result in case withdrawal if raised as an affirmative defense and proven to be critical to defense of the claim.

2-12 Any party that participated in the original hearing may appeal a decision in the Property and Special Forums so long as the *Company Claim Amount* is \$25,000 and above (Property); the *Total Settlement Amount* is \$100,000 and above (Special).

(a) The Arbitration Decision Appeal form indicating the basis for the appeal and a brief statement regarding the alleged error by the original panel must be received by AF's Service Quality Department located at corporate headquarters, with a recommended courtesy copy mailed to all parties, within thirty (30) days of the decision publication date. AF recommends the use of email or a mail service (i.e., certified mail, overnight mail) that can confirm AF's receipt should the issue of AF's timely receipt arise. The Arbitration Decision Appeal form may not be modified, and no other documentation will be accepted.

(b) AF will confirm receipt of the appeal to all parties, and the adverse party will have thirty (30) days from AF's notification letter to submit its brief response to the appeal. A party waives its right to respond if its response is not timely received.

(c) AF will forward the original file, including any notes taken by the original panel, and decision along with the Appeal Form and response to a new three-person appeal panel. No arbitrator from the original panel will sit on the appeal panel. No additional documentation or evidence is allowed. No personal appearances (i.e., company representative, witness, expert) of any type (i.e., telephone, videoconferencing, etc.) are allowed, even if such appearance was made at the original hearing. The appeal panel will review only the documents included in the original file, the decision, and the appeal form and response.

(d) The appeal panel's decision will be final and binding with no right to further review, appeal, or inquiry.

AF will charge a substantial, non-refundable fee to the party filing the appeal.

### **SECTION THREE**

#### **Hearings**

3-1 For cases filed via AF's Web site, AF will immediately notify the parties of the hearing date and any subsequent changes. For parties that do not file or respond online, AF will send a hearing notice at least 40 days prior to the initial hearing date, unless waived, and notify them of any changes. For Special Arbitration cases, 60 days notice will be provided.

3-2 A case will proceed to hearing even if a responding company fails to answer.

3-3 One arbitrator will hear a case unless a three-person panel is requested based on the following limits:

Automobile, Medical Payment, or PIP Forum – Company Claim Amount of \$7,500 and above  
Property or Special Forum – Company Claim Amount, or, Contribution Sought or Legal Fees Sought of \$15,000 and above.

A party requesting a three-person panel will be charged a three-person panel fee.

When companion cases are filed in multiple forums and a three-person panel is desired, the following forum order will be used to determine which monetary limit applies: Special, Property, PIP, Med Pay, Auto.

3-4 The arbitrator(s) may grant an adjournment for cause or to request briefs of law or clarification of submitted materials (including policy limit issues). AF will notify all parties of the new hearing date. If the requested documents are not received by the due date, the hearing will proceed without them.

3-5 The arbitrator(s) may only consider

- (a) Affirmative pleadings or affirmative defenses included in the *Affirmative Pleading/Defense* section of the Contentions Sheet
- (b) Deferment requests that are supported in the *Deferment Justification* section of the Contentions Sheet
- (c) Evidence listed on the Contentions Sheet.
- (d) Amount entered as the *Company Claim Amount, Contribution Sought Amount, and/or Legal fees* on the application
- (e) Disputed damages if specifically pled in the *Damages* section of the Contentions Sheet.

3-6 Procedure at arbitration hearings is informal and confidential. Formal rules of evidence do not apply. No recording of the proceedings, in any manner, is allowed.

3-7 A party may present witnesses or attend an arbitration hearing. The intent to do so must be noted on the application.

- (a) Insureds or witnesses may not appear without the presence of a company representative.
- (b) Insureds or witnesses may appear only if their written or transcribed recorded statement or report is listed as evidence on the contentions sheet and their appearance is known to AF and all parties. They may only clarify, at the arbitrator's request, such statement or report for the arbitrator and may not present testimony or additional evidence. Specifically, witness testimony is not evidential.
- (c) All parties will be dismissed after their appearance and will be subsequently notified of the decision.
- (d) A party attending the hearing may bring its listed evidentiary materials to the hearing in lieu of mailing to AF in advance so long as it has complied with Rule 2-1 and 2-2.

3-8 No arbitrator will hear a case in which he/she personally or his/her company has any direct or indirect material interest.

3-9 A responding company may assert no coverage, a denial of coverage, or a policy limits defense in writing to AF up to 60 days from the publication of the decision if the

- (a) filing company made its filing at least 120 days before the statute of limitations expires; and

(b) responding company pleads its defense at least 60 days before the statute of limitations expires.

A copy of the denial of coverage letter to the party seeking coverage for the loss or proof of policy limits must accompany the written notice or no action can be taken.

When an award exceeds policy limits, the filing company will have the option to accept the policy limits as final settlement and forego recovery of the claim against the insured directly or have the decision voided to pursue alternative means of full recovery.

## **SECTION FOUR Decisions**

4-1 Arbitration panels may not render default judgments. Decisions must be based on the evidence submitted. In the Uninsured Motorists Forum, the filing company must establish its basis for challenging the adverse company's denial of coverage and/or why the adverse company should reimburse the UM settlement. Liability and damages will not be disputed.

4-2 Pursuant to Article Third, the arbitrating companies must provide written notice of a clerical or jurisdictional error to AF within 30 days after the decision's publication date. The determination as to whether or not an actual error was made is at AF's sole discretion and is not subject to further review, appeal, or inquiry. AF may also find and correct clerical or jurisdictional errors without notice from the arbitrating companies within 30 days after publication of the decision.

4-3 Decisions will be posted on the AF Web site following the hearing. Electronic signature(s) of the arbitrator(s) will be used.

## **SECTION FIVE Awards**

5-1 The parties shall honor all awards within thirty (30) days of the decision publication date.

5-2 When a party(ies) does not honor the award within thirty (30) days after publication

(a) The prevailing company's local representative must immediately send a written request for payment to the adverse company's local senior representative, addressing him/her by name.

(b) If the award remains unpaid thirty (30) days after written request for payment, the company should send a copy of the letter to AF requesting assistance with the award payment.

(c) AF will notify the non-paying company.

(d) If the award remains unpaid for an additional thirty (30) days, the company may seek legal recourse in pursuit of collection and is entitled to statutory interests and all legal fees and costs incurred in pursuing collection until the award is paid.

5-3 Payments made as a result of the award are to be made only to the filing company. Payments must include any deductible interest, if applicable, in the interest of good will between the companies. In the Automobile, Property and Special (for workers compensation subrogation claims) programs, a filing company can file for supplemental damages paid after the Materials Due Date of the original hearing or anytime thereafter. In the PIP and Medical Payments programs, a filing company can file for supplemental damages paid after the initial filing, if these damages are contested by the responding company. In all programs, the original liability decision is *res judicata*. The sole issue in these filings is the supplemental damages.

In Special Arbitration, if the original settlement of the claim is legally voided, the arbitration finding is nullified and the award payments must be returned.

## **SECTION SIX Administration**

6-1 The filing company incurs a filing fee payable to AF. A responding company that files a counterclaim shall also pay the prescribed filing fee. In Special Arbitration, all parties incur the prescribed filing fee.

6-2 AF will return photographs, if requested as an administrative request on the contentions sheet, and a self-addressed, stamped envelope of sufficient size and postage is provided. All other material will be destroyed following the hearing.

## DEFINITIONS

The following are definitions of terms as applied to the various Agreements and Rules.

**Adjournment** – An interruption of a hearing at the discretion of the arbitrator(s) for a maximum of 30 days.

**Affirmative Defense** – A complete defense that does not address the allegations, but instead, asserts reasons that preclude the arbitrator(s) from accepting jurisdiction and ruling on the disputed issue(s).

**Affirmative Pleading** – An issue or legal doctrine that reinforces the filing company’s position or refutes an affirmative defense asserted by an opposing party. Examples include *res ipsa loquitur*, which could support a company’s liability position, or bailment and joint and several liability, which could change how damages are awarded.

**Casualty Insurance** – (Special Arbitration) an insurance contract that provides indemnity (including UM coverage; but excluding UIM coverage) and/or defense to the insured for legal liability arising from an accident, occurrence, or event for which the policy applies, resulting in bodily injury, property damage, personal injury, or advertising injury.

**Clerical Error** – An unintentional mistake made by Arbitration Forums’ staff or the arbitrator(s). Examples of AF staff error include mishandling documentation, not providing proper notice of hearing, or not assigning a requested three-person panel. Arbitrator errors include mathematical errors in applying the liability percentage against the amount of damages proven and switching the parties when recording the decision.

**Collateral Estoppel** – A bar by judgment that precludes the relitigation of issues litigated by the same parties on a different or the same cause of action.

**Commercial Property** – (Property Subrogation Arbitration) Coverage for businesses, institutions, or organizations to protect their property and/or business. Commercial Property coverage includes, but is not limited to, risks such as fire, burglary, theft, goods in transit covered by inland marine insurance, floaters, or endorsements.

**Companion Claim** – Any additional claim(s) by or against a participating party(ies) arising out of the same accident, occurrence, or event that falls under the same or another AF compulsory forum.

**Concurrent Coverage** – (Special Arbitration) Two or more policies of insurance and/or self-insureds providing coverage to the same party or parties or the same risk or risks for the same accident, occurrence, or event. Concurrent coverage includes primary/excess disputes.

**Construction Defect Claim** □ (Special Arbitration) A construction defect claim includes both indemnity and expense, paid or prospective. For completed (paid) constructive defect claims, there is a combined award limit for indemnity and expense of \$250,000 per responding company’s insured per project. A perspective indemnity claim is not eligible for arbitration without consent of all parties. For prospective expense contribution issues, there is no monetary limit. All claimants (unit-residences) of a construction project, regardless of the manner or number of underlying claims, suits, or “companion claims” shall be considered as one claim for hearing and contribution limits.

**Construction Defect Dispute-** (Special Arbitration) A dispute among one or more Casualty insurance companies or entities that are “Self-Insured” for a construction defect claim involving completed operations resulting in damages to real property for which one or more Insurers or Self-Insurers provided defense and/or indemnity for the construction defect claim and allege that one or more other Insurers or Self-Insurers provided concurrent coverage for the same construction defect claim.

**Counterclaim** – A claim, resulting from the same accident or loss as the original claim, presented by the original Respondent against the original Applicant in an arbitration proceeding. (Not applicable in the Special Arbitration forum).

**Deferment** – A postponement of a hearing for one year from the date of filing.

**Denial/Disclaimer of Coverage** - A company's assertion that:

- a. there was no liability policy in effect at the time of the accident, occurrence, or event, or
- b. a liability policy was in effect at the time of the accident, occurrence, or event, but such coverage has been denied/disclaimed to the party seeking coverage (i.e., alleged negligent party) for the claim in dispute. (This applies only to a denial of coverage based on the event in dispute. If the denial is based on what damages the policy covers, i.e. work product, the case will proceed to hearing to determine what damages, if any, are payable per the policy.)

**Jurisdictional Error** – Occurs when an arbitrator fails to rule on an Affirmative Defense; asserts an Affirmative Defense not pled by a party; renders a decision on an issue not in dispute or over which arbitration lacks jurisdiction; or improperly dismisses a case for lack of jurisdiction where jurisdiction exists.

**Legal Fees** – Attorney fees, court costs, and all other expenses directly related to the prosecution or defense of a lawsuit.

**Noninsurer** – A “noninsurer member” shall mean a member who is neither a Trade Association member nor an insurer member and who has a direct financial interest in the claims being arbitrated.

**Personal Property** – (Property Subrogation Arbitration) Coverage to protect individuals for damage to their property other than automobile. Personal Property coverage includes, but is not limited to, homeowners insurance, tenant or renters insurance, watercraft or boat owners insurance and watercraft endorsements, and personal inland marine coverage.

**Publication Date** – The date when AF transmits or mails the decision to all interested parties.

**Recovery Rights** – Legal capacity to regain a loss to another through subrogation, reparations, reimbursement, indemnity, or direct action.

**Res Judicata** – A judgment, decree, award, or other determination that is considered final and bars relitigation of the same matter.

**Reschedule** – An extension of the hearing date granted by AF at the request of a party(ies) or at AF's discretion to an arbitration hearing, not to exceed 60 days.

**Respondent** – The company or companies against whom the Applicant initiates arbitration. All references to Respondent apply to all answering companies.

**Self-Insured** – An entity that meets the state requirements of being self-insured, one that assumes the risk directly for covering losses involving its property, or one whose deductible or retention is equal to or exceeds the amount of the loss in dispute.

**Settlement** – (Special Arbitration) The final disposition of a claim or suit wherein the claimant or plaintiff releases any and all causes of action against all alleged responsible parties involved in the Special Arbitration filing. Workers' Compensation subrogation cases do not require a settlement, and Uninsured Motorists' settlements do not require a release of all parties.

**Written Consent** – A documented agreement to binding arbitration by the party(ies). Answering a filing without a valid objection to jurisdiction is considered written consent.