Reference Guide to Arbitration Forums’ Agreements and Rules
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Chapter 1

Arbitration Forums, Inc.’s Background

The Federal Arbitration Act of 1925 establishes the validity of agreements to arbitrate disputes arising out of maritime, interstate, or foreign commerce. This statute also allows parties to agree to arbitrate. Many insurers are signatories to agreements that provide for arbitration. The Uniform Arbitration Act and subsequent state acts further address arbitration agreements. Under the agreements, the involved parties agree to submit any applicable dispute that may arise between them to arbitration instead of litigation. These agreements mandate the disputes the parties must take to arbitration.

An effort by the casualty insurance industry to seek arbitration as an alternative to litigation began in 1943 in New York. The New York City Claim Managers’ Council appointed a committee to serve as an arbitration board. Members of the Claim Managers’ Council agreed to arbitrate certain automobile physical damage subrogation claim disputes arising between themselves. The arbitration board confined its service to members of the Association of Casualty and Surety Companies and the National Association of Mutual Casualty Companies in metropolitan New York.

By 1951, the casualty insurance industry throughout the United States recognized the success of this New York venture. The insurance companies improved their intercompany working relationships by reducing the amount of litigation and the related costs. Due to this local success, the Combined Claims Committee rewrote the original agreement and sponsored it as a nationwide program.

During the 1950s, the Combined Claims Committee created two additional arbitration programs. The first program was the International Reciprocal Arbitration Agreement, which expanded the Automobile Arbitration program to accidents involving U.S. and Canadian insureds. In 1957, the committee created the second program with the Special Arbitration Agreement.

Although the Combined Claims Committee established Special Arbitration to settle disputes between liability carriers of casualty insurance policies, it was to become the cornerstone for commercial disputes. Participants in commercial disputes may include self-insured businesses or commercial insureds with large retentions. Under joint and several statutes, a contractual obligation may bind a non-negligent party to a negligent tortfeasor that makes one or both obligated to pay damage to a third party. The negligent act may be one that causes personal injury or property damage. The Special Arbitration Forum’s purpose is to determine contribution or apportionment of liability among third-party insurers and to resolve overlapping coverage disputes.

Through the early years, the arbitration programs grew to 480 participating companies. By the late 1960s, arbitration committees were hearing and closing almost 100,000 cases annually. The development and administration of the arbitration program continued to require more time at the Combined Claims Committee meetings. As a result, in 1967, the Combined Claims Committee transferred its arbitration sponsorship to an independent committee called the Committee on Insurance Arbitration.

The Committee on Insurance Arbitration represented all segments of the insurance industry. It included companies belonging to three trade associations, along with companies without any trade association affiliation. This insurance arbitration committee became the largest system of its kind in the world, and it recognized the need to create a legal entity to administer the arbitration programs. In 1981, this concern led to the incorporation of Insurance Arbitration Forums (IAF), a not-for-profit company. With the
formation of the corporation, the Board of Governors of the Committee on Insurance Arbitration became the Board of Directors for the new corporation.

Insurance Arbitration Forums, Incorporated remained the corporate name until 1986, when the Board of Directors resolved to eliminate “Insurance” from the name. This change reflected the expansion of AF’s programs to include arbitration situations outside the insurance company arena. These additional mediation and arbitration services fulfilled a direct need expressed by the insurance industry. Because AF always provided an objective, neutral administrative service, the Board felt the new name would better express its mission and goals.

AF is an integral part of the claim settlement process and provides an essential service as administrator of the arbitration process. Members created and control this corporation. Currently, the Board of Directors is comprised of representatives from the insurance trade associations. Two trade associations, representing nearly 1,000 different carriers, have permanently assigned positions on the Board. The associations are the American Insurance Association (AIA) and the Property Casualty Insurers Association of America (PCI)—formerly the National Association of Independent Insurers (NAII) and the Alliance of American Insurers (AAI). Each trade association selects additional board members from its small, medium, and large carriers.

As it grew, AF moved its corporate offices in 1983 from New York City to Tarrytown, New York. In 1992, it moved to its current corporate headquarters in Tampa, Florida. During the early 1990s, the Board of Directors and management became more responsive to member needs by re-engineering the corporation and developing automation systems.

AF continues to fulfill its role as a respected and efficient administrator of alternative dispute resolution (ADR) services. ADR collectively refers to various means of resolving controversies without litigation and is usually voluntary. When a company voluntarily signs the agreement to arbitrate future controversies within specific parameters, arbitration becomes compulsory for member companies for those controversies.

AF offers and maintains unsurpassed professional service to its members and other users at minimum cost. It is a service-oriented company with a roster of nearly 5,900 highly skilled and objective arbitrators, many of whom the member companies provide. Annually, these professionals hear and decide over 477,000 cases involving more than $2.3 billion in claims.

Arbitration Forums has grown from an idea in 1943 to the recognized and respected corporation that it is today. The corporation is proud of its legacy and constantly strives to achieve the highest quality in every service offered. We hope that this reference guide attests to this fact.
Chapter 2

Definitions

The following definitions are provided to ensure a consistent understanding and interpretation of certain words used within the various AF Agreements and Rules. If a word is unique to only one of the programs, the program is identified in parentheses following the definition.

Adjournment – An interruption of a hearing at the arbitrator’s(s’) discretion 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 loquitor, 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 Uninsured Motorists’ 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, not assigning a requested three-person panel. Arbitrator errors include: mathematical errors in applying the liability percentage against the amount of damages proven, switching the parties when recording the decision.

Collateral Estoppel – A bar by judgment that precludes the re-litigation 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 arising out of the same accident, occurrence, or event, which 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 prospective 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 filed by a responding company against the original filing company in an arbitration proceeding. (Not applicable in Special Arbitration)

Deferment – A postponement of a hearing for a one-year period.

Denial of Coverage – A company’s assertion that the entity(ies) and/or individual(s) involved in the accident, occurrence, or event in dispute is not covered under the company’s policy of insurance or that there was no policy in effect at the time of the accident, occurrence, or event. (It is not a denial of coverage as long as the company admits that the party(ies) is an insured under the policy in effect at the time of accident, occurrence, or event, i.e., primary/excess coverage, policy limits, or the claim is being handled under a reservation of rights.)

Jurisdictional Error – Occurs when an arbitrator fails to rule on an affirmative defense, asserts an affirmative defense not plead 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.

Non-insurer – A “non-insurer member” or “self-insured member” shall mean a member who is neither a Trade Association member nor an insurer member and who has 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 – (PIP Arbitration) 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 the party(ies), not to exceed 60 days.

Self-insured – An entity that meets the legal requirements of being self-insured; one that assumes the risks directly for covering losses involving its property, or one whose deductible or retention is equal to or exceeds the amount of 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 an objection to jurisdiction is considered written consent.
Chapter 3

Article First
Compulsory Provisions

Signatory members must forego litigation and arbitrate claim disputes as specified by Article First of the respective Agreement. Each Agreement is a legal contract, and a signatory member accepts and binds itself to all of the Forum’s Articles and Rules by signing it.

A frequently asked question concerns the applicability of the Agreement to pending claims – or, when does arbitration become compulsory. Simply, it is the status of the claim at the time the member becomes a signatory. If a member becomes signatory to a Agreement today, any claim falling under that Agreement that is currently pending in litigation may remain in litigation (unless the parties consent to arbitrate); any claim that has not been filed in litigation must be filed in arbitration.

Another point to clarify is, each Agreement is independent. Before you file arbitration versus a ‘signatory’ or a ‘member’, make sure the company is a signatory or a member to the specific Agreement in which the dispute is to be filed. All members are not signatory to all Agreements.

Automobile Forum

The type of claim dispute heard under the Automobile Subrogation Arbitration Agreement is between a member with an automobile physical damage claim and another member(s) who allegedly is liable for the damages. The dispute may concern liability, damages, or both.

A claim filed in the Auto Forum may consist of more than just a collision or comprehensive payment. A claim may include an itemized list of losses such as towing, storage, rental reimbursement, and salvage expenses, provided they were paid out of the insured’s policy. However, the disputed claim amount cannot include a company’s normal operating expenses or an insured’s out-of-pocket expenses.

Another important point is that the member filed against (respondent) is not limited to an automobile liability insurer. A respondent may be a general liability carrier, homeowner’s liability carrier, etc. Any member who may be liable for the applicant’s damages may be named as a respondent.

The following are some examples of Auto Forum claim disputes:

- An automobile is damaged because of a malfunction at a drive-thru car wash.
- A florist’s delivery van is struck by an automobile at an intersection.
- A defective part causes a tractor-trailer driver to lose control and overturn.

Property Forum

Article First broadly describes the disputes that determine if a member must arbitrate in the Property Subrogation Arbitration Forum. Samples of the coverages included in compulsory Property Arbitration are listed in the personal and commercial property definitions that precede the Agreement (see Chapter 2, Definitions). The disputes may concern liability, damages, or both.

Some examples of the types of disputes that qualify for Property Arbitration are

- A member pays its insured for a fire covered under its homeowner’s policy. It is determined the fire started the first night after the installation of a new furnace. The member can file in Property Subrogation Arbitration against the insurer of the furnace installation business and/or against the self-insured manufacturer of the furnace.
• An insurer pays an apartment tenant for water damage to his insured property. The damage was caused by water leaking through the ceiling from the apartment above. The insurer then can file Property Arbitration against the insurer of the tenant above and/or the landlord’s liability carrier.

• Two boats collide on the largest lake located in central West Virginia. The boat owner’s insurer files arbitration against the insurer of the other boat to recover damages sustained in the accident.

• A woman has her expensive jewelry covered under a Personal Inland Marine Policy. While staying at a hotel on a business trip, she was forced to quickly evacuate the hotel because of a fire alarm. Upon returning to her room, she found that her diamond ring had been stolen. The insurance carrier paid for the loss and filed Property Arbitration against the hotel’s insurer.

• A pizza restaurant caught fire in a strip mall, causing fire damage to the structure and contents of an adjacent furniture store. The furniture store’s insurer files arbitration against the insurer of the pizza restaurant to recover its loss.

• An automobile driver loses control while turning at an intersection and drives the car into the front of a convenience store. The convenience store insurer can file Property Arbitration against the insurer of the automobile.

• A tractor-trailer overturns while striking a car in an intersection. The car allegedly did not stop for a signal light. The cargo, insured under a commercial inland marine endorsement, was completely destroyed. The inland marine insurer can file arbitration against the insurer of the automobile to recover the payment for the destroyed cargo.

These few examples emphasize the potential for property subrogation recovery. Claim personnel should be aware of and take advantage of these subrogation opportunities.

Special Arbitration

Article First describes the type of unresolved disputes that signatory companies must submit under the Special Arbitration Agreement. The first sentence of Article First specifies that the settlement of the claim or suits triggers the compulsory provisions. Settlement is defined as “the final disposition of a claim or suit wherein the claimant or plaintiff releases any and all causes of action against alleged responsible parties involved in the Special Arbitration filing.” This does not say that the insurance carrier must be named on the release, only that responsible parties are released. Though there is no specific requirement that a copy of the release be provided, it is highly recommended that a copy be submitted with Company 1’s evidence.

There are two important exceptions to the requirement for settlement. Workers’ compensation subrogation cases do not require settlement and Uninsured Motorists’ settlements do not require a release of all parties.

Article First, subsection (a) describes one type of unresolved dispute that signatory companies must submit to Special Arbitration. This article applies when each company provides casualty coverage either as an insurer or a self-insured for one or more parties who are allegedly legally liable for bodily injury and/or property damages to a third party arising from an accident, occurrence, or event resulting in a claim or suit. This occurs when two or more alleged tortfeasors cannot agree on the respective allocations of fault or negligence for the damages and could involve any type of casualty or liability coverage.

EXAMPLE: A dispute results when a leased car veers out of control and strikes a newsstand and several pedestrians. The driver’s insurer (Company 1), the leasing company’s insurer (Company 2), the insurer of the newspaper stand (Company 3), and the insurer of the automobile manufacturer (Company 4) are unable to agree on their respective liability.

EXAMPLE: Company 1 has made an Uninsured Motorists’ settlement with its insured because no liability insurance was identified for the tortfeasor. Company 2 subsequently acknowledges coverage for the tortfeasor but has been unwilling to reimburse Company 1. Note that in this example the carrier for the tortfeasor has now acknowledged coverage. If there were still a dispute over the
denial of liability coverage, the case would be filed in the Uninsured Motorists’ Forum to determine the validity of that denial.

Article First, subsection (b) requires member companies to arbitrate concurrent coverage disputes. In this type of dispute, each company provides property or casualty coverage, either as an insurer or as a self-insured company, to the same party or parties. The same accident, occurrence, or event involves these insured parties and results in a first-party or third-party claim or suit for bodily injury or property damage. Concurrent coverage includes primary/excess disputes or disputes regarding the amount and/or extent of coverage provided.

**EXAMPLE:** Company 1 insured an individual under a homeowner’s policy, and Company 2 insured the same individual under an automobile policy. A neighbor injured his arm when it was thrust through a window in an entrance door to the garage on the premises of the insured. The injury occurred when the neighbor tried to rescue the insured who was carelessly working on his car with the engine running in a closed garage. The homeowner’s carrier raised the coverage defense that the automobile policy was answerable to the claimant because the accident arose out of the use of the vehicle. The auto carrier disputed that position. One or both of the carriers settled with the third party. The coverage question between the homeowners and automobile policies was submitted to Special Arbitration.

**EXAMPLE:** A condominium owner’s insurer, Company 1, paid for a fire loss. The Condominium Association also had fire insurance for the same loss with Company 2. Company 1 believed Company 2 should cover the insured’s loss. When both insurers are signatories to the Special Forum, this coverage issue would be appropriate and compulsory for Special Arbitration.

The next paragraph recommends that each party pay an equal share to the claimant to complete the settlement, conclude the claimant’s interest in the case, and release any causes of action against the alleged responsible parties. This prevents one party from fronting an entire settlement without waiving the opportunity to cap the third-party damages and to have the arbitrator determine the actual comparative negligence among the parties.

Article First, subsection (c) provides the avenue for workers’ compensation carriers or self-insured employers to subrogate for the workers’ compensation benefits paid to an injured worker because the workers’ compensation carrier or self-insured employer may recover only its own payments made to and on behalf of the injured worker. Therefore, the workers’ compensation carrier or self-insured employer does not provide a release of the injured worker’s rights against the tortfeasor.

The last paragraph of Article First further indicates that settlement of a case is made without prejudice to any party participating in the settlement. The arbitration panel will not consider the amount an insurer paid toward a settlement as an admission of any degree or percentage of liability. The amount of settlement is not an issue unless one of the disputing parties contests the settlement amount.

**EXAMPLE:** An employee of a delivery company is injured when he trips and falls making a delivery, resulting in a workers’ compensation claim. The workers’ compensation carrier makes a subrogation claim for the statutory benefits paid against the premises owner, whose carrier denies liability. The workers’ compensation carrier submits the subrogation claim to Special Arbitration.

If further workers’ compensation benefits may be incurred and the statute of limitations is about to run, we recommend Company 1 file in Special Arbitration to toll the statute and request a deferment based on the justification that the amount of the contribution sought is not yet finalized. However, Company 1 may file for supplemental damages after a decision has been rendered if supplemental benefits are paid for the same injury after the original filing. The original decision is *res judicata* on the issue of liability, and the sole issue in the subsequent filing is causation and damages.

**PIP Forum**

The type of claim dispute heard under this Agreement is between a member with PIP coverage and another member(s) who allegedly is liable for
the damages. The dispute may concern liability, damages, or both. The Personal Injury Protection (PIP) Arbitration Agreement is the only Agreement AF offers that allows a company to select specific states in which it wishes to be signatory. All other AF Arbitration Agreements are national. In addition, it must be noted that some states statutorily mandate the use of arbitration to resolve intercompany PIP disputes. Some states specifically name Arbitration Forums, Inc. as the preferred provider (i.e., New York and Minnesota).

A claim filed in the Personal Injury Protection Forum may consist of more than just a medical expense. A claim may include an itemized list of losses, such as medical expenses, funeral expenses, wage loss, loss of services, or child care expenses provided they were paid out of the insured’s policy. However, the disputed claim amount cannot include a company’s normal operating expenses or an insured’s out-of-pocket expenses (except in Massachusetts where the PIP statute allows for the recovery of operating expenses under allocated and unallocated expenses).

Another important point is that the member filed against (respondent) is not limited to an automobile liability insurer. The respondent may be a general liability carrier, homeowner’s liability carrier, etc. Any member who may be liable for the applicant’s damages may be named as respondent.

The following is an example of a Personal Injury Protection Forum claim dispute:

• Liability is in dispute when a pedestrian is struck by an automobile when crossing a street and local statute requires the pedestrian’s automobile Personal Injury Protection to be primary.

Rule 1-3, authorized by this Agreement, limits compulsory arbitration to the monetary limit governed by the statute or endorsement creating the subrogation or direct action recovery right. Larger claims may be filed, however, with all parties’ consent.

Medical Payments Forum

The Medical Payment Subrogation Forum resolves disputes arising from subrogation of medical payments coverage between insurance companies only. The interests of parties other than insurance carriers may not be arbitrated under this Agreement. Insureds of signatories who dispute values or coverages cannot be parties to the arbitration.

The jurisdiction of this forum is limited to those States that allow for medical payments subrogation recovery.

Uninsured Motorists Forum

The Uninsured Motorists’ Arbitration Forum is the forum in which insurance companies bind themselves to arbitrate coverage questions under automobile liability policies in which a disclaimer results in a claim against another member company under its uninsured motorist endorsement. If one participating company denies coverage to its insured, and if its denial forces the filing company’s insured to look to its own carrier under the uninsured motorists’ coverage for recovery, and if the latter does not agree with merits of the disclaimer, we have a dispute to be resolved between the carriers under the compulsory provisions of this program.

The main criterion to determine whether a case is appropriate for the Uninsured Motorists Forum is to establish that a denial of coverage has been issued by Company 2 (the responding company). Company 1 (the filing company) must then present contentions that establish its basis for challenging Company 2’s denial of coverage and the reasons why Company 2 should reimburse the Uninsured Motorists settlement. The coverage denial is the basic argument in the Uninsured Motorists Forum as liability and damages will not be disputed; moreover, any affirmative defense raised must not argue coverage (except limits), liability, or damages.

EXAMPLE: Company 1 contends its vehicle was damaged as a result of Company 2’s negligence and questions the validity of Company 2’s denial of coverage. Company 2 doesn’t argue that the vehicle was not involved in the accident but contends its vehicle was stolen and asserts a denial of coverage based on non-permissive use.
Company 1 points out that the auto theft report was not made until approximately 7 to 8 hours after the actual impact between Company 1, Company 2, and an additional non-tortfeasor vehicle, and the police report narrative indicated Company 2’s ignition was not punched out. Company 1’s insured made a claim for UM benefits as a result of Company’s denial of coverage.
Chapter 4

Article Second

Exclusions

No company shall be required, without its written consent, to arbitrate any claim or suit if

a) it is not a signatory company nor has given written consent; or

b) such claim or suit creates any cause of action or liabilities that do not currently exist in law or equity; or

c) its policy is written on a retrospective or experience-rated basis; or

d) any payment which such signatory company may be required to make under this Agreement is or may be in excess of its policy limits. However, a filing company may agree to accept an award not to exceed policy limits and waive their right to pursue the balance directly against the responding company’s insured; or

e) it has asserted a denial of coverage; or

f) any claim, which a lawsuit was instituted prior to, and is pending, at the time the Agreement is signed; or

g) under the insurance policy, settlement can be made only with the insured’s consent; or

h) it is a watercraft claim(s) arising from accidents on waters under federal or international jurisdiction. (Property Forum)

Article Second lists the exclusions to the compulsory provisions contained in Article First of the respective Agreement. Each forum varies slightly, so review the specific Agreement when determining whether an exclusion applies to a case you are handling. If any of these exclusions apply to the dispute or suit in question, the members are not required to file arbitration. If arbitration is filed, the responding member must answer the filing and raise the exclusion as an affirmative defense in the Affirmative Defense section of the Contentions Sheet in order for an arbitrator to consider removing the case. The responding member is also free to waive asserting the affirmative defense if it wishes the case to proceed to hearing and, as such, will abide by the decision and honor any award rendered against it.

Article Second, subsection (a) states a company is not required to participate in arbitration if it is not a signatory to the specific Agreement under which the filing has been made or has not given its written consent. Chapter 7, Article Fourth discusses how a non-signatory can participate by giving its written consent. Aside from a filing
against a non-signatory insurer or self-insured, subsection (a) also applies to cases where a responding company’s insured has a large liability deductible or self-insured retention. If the amount of damages sought by the filing company is less than the responding insured’s liability deductible or self-insured retention, arbitration would lack jurisdiction if this is raised and supported as an affirmative defense. An arbitrator can consider only an amount in excess of the insured’s deductible or self-insured retention. In these cases, the filing company can file arbitration versus the commercial insured if they are signatory or consent to arbitration.

Subsection (b) reinforces that an arbitrator or the parties to arbitration cannot create a cause of action or liability that does not exist. They must work within the statutes and case law that exist where the accident occurred. A company can also use all of the defenses that are available in a court of law, including affirmative defenses such as the expiration of the applicable Statute of Limitations or the absence of a right of recovery (Medical Payments forum).

The third exclusion, subparagraph (c), eliminates the requirement for arbitrating claims made against retrospective or experience-rated policies. A retrospective or experience-rating plan is a method of computing an insured’s insurance premiums based upon the actual losses incurred over a stated period, normally the policy year. The insurer establishes an initial rate and then adjusts it according to the insured’s actual losses. A retrospective rating plan arbitration decision would indirectly affect the insured’s interest because of the rate/loss experience relationship. For that reason, a claim under such a policy is excluded. If a case involves a retrospective or experience-based policy, the insurer must raise the affirmative defense to jurisdiction and include evidence to support it. The insurer issuing the policy may give its consent for the arbitration to proceed, either written or implied by silence (i.e. not asserting the affirmative defense), and the arbitrator will hear the case.

According to Article Second (d), arbitration is not compulsory if the amount sought exceeds a responding member’s policy limit or where a decision could expose one of the responding members beyond its policy’s dollar limit. The filing member may agree, however, to accept an award that falls within another member’s policy limit, even though the amount actually owed exceeds the limits, to keep the dispute within arbitration’s jurisdiction. By doing so, that member waives any right to pursue the balance of the claim afterwards.

A frequently asked question concerns whether or not a member may proceed directly in litigation to pursue the full claim amount, if it has decided to not accept the policy limits as final settlement. The answer is affirmative. A member does not need to file arbitration only to have the matter removed because of the policy limit exclusion.

The fifth exclusion to arbitration’s compulsory provisions involves coverage denial situations. A company should base its coverage denial on the fact that the company’s policy does not cover the individual or entity seeking coverage for the claim or suit or that there was not a policy in effect at the time of the incident at issue. Before objecting to jurisdiction based on a coverage denial, an insurer should be aware of Rule 2-8 (Chapter 21). If a case is wrongfully removed from arbitration because of a coverage denial and coverage is admitted later, the objecting company must reimburse the other company for legal expenses and any court costs.

Article Second, subsection (f) excludes a claim if litigation was filed before the member signed the respective Agreement. The Agreement takes effect on the date it is signed. It is not to be used as a means to avoid any previous legal obligations including pending litigation. All claim disputes not in suit on the date the company signs the Agreement must proceed in arbitration if the parties are unable to negotiate a settlement.

The seventh exclusion indicates that a party does not have to use arbitration to resolve a dispute if the terms of the insurance policy require the insured’s consent to settle. The purpose of this exclusion is to avoid the possibility of the Agreement interfering with the contractual rights between an insured and an insurer. This exclusion does not completely preclude the possibility of arbitration. A carrier faced with this situation can
secure its insured’s consent to proceed through arbitration. If the insured agrees, arbitration can assume jurisdiction.

The seventh exclusion exempts watercraft claims that arise from accidents in or on waters subject to federal or international jurisdiction. Watercraft claims are normally restricted to accidents happening on bodies of water that are entirely within the geographic and jurisdictional limits of one state.
Chapter 5

Article Third

Decisions

The decision of the arbitrator(s)

a) shall be based on local jurisdictional law consistent with accepted claim practices.

b) is final and binding without the right of rehearing or appeal except when allowed under the Procedure Section of the Property and Special Forum rules. However, this does not preclude AF from correcting a clerical or jurisdictional error of an arbitrator(s) or AF staff.

c) is neither res judicata nor collateral estoppel to any other claim or suit arising out of the same accident, occurrence, or event except where an applicant seeks recovery of supplemental damages as allowed under the Awards section of the rules. The decision is conclusive only of the issues in the matter submitted to the arbitrator(s) and only as to the parties to the arbitration. The admissibility of the decision in any other proceeding is not intended, nor should be inferred from this Agreement.

All matters concerning an arbitration proceeding shall be held in strict confidence.

Arbitration Forums’ success and its members’ confidence depend on application of the proper law. Article Third, subsection (a) asserts Arbitration Forums’ requirement that arbitrators base their decisions on the applicable local jurisdictional law.

Arbitrators must consider the written rules, regulations, and statutes established by legislative bodies and previous court decisions within their jurisdiction. A member can also use all of the defenses that are available in a court of law including an affirmative defense. If the courts in a particular jurisdiction recognize the validity of a particular affirmative defense, then the arbitrator must also consider the defense. An arbitrator must place the same emphasis on evaluating defenses plead in arbitration as if it had been raised in litigation.

Article Third in the Special Arbitration Agreement also refers to the arbitrators using “equitable considerations” to make their decisions. Equitable consideration is careful deliberation by the arbitrator that results in a fair and just decision. This relates primarily to the apportionment of the settlement amount paid to the claimant among the parties based on the facts pertaining to their respective liability or coverage considerations.

Several states have enacted unfair claim settlement practices acts. These laws and company guidelines provide the basis for establishing accepted claim practices. Since the arbitrators are experienced in claim handling and the use of accepted claim practices, they also apply this knowledge in arriving at their decisions.

Because parties enter into arbitration in dispute, there will be times when claim representatives will
not want to accept an arbitrator’s decision. However, Article Third, subsection (b) addresses specifically that decisions are final and binding without the right of rehearing or appeal, except in the case of clerical or jurisdictional errors or as allowed under Rule 2-12 in the Property and Special Forums (Chapter 25).

A correction only applies if AF or an arbitrator makes the clerical or jurisdictional error. If a disputing party makes a clerical error, it has no recourse for correcting the error after the hearing. Before the hearing, a party can amend its application or answer.

The purpose of Article Third, subsection (c) is to inform the members about the limitations associated with using an arbitration decision to determine the outcome of other proceedings related to the same event. For that reason, AF declares that its decisions are neither res judicata nor collateral estoppel to other claims or suits arising from the same accident, occurrence, or event. However, the decision is res judicata to the sole issue of supplemental damages related directly to the original award if the applicant follows the guidelines in Rule 5-3. Otherwise, a party cannot use the decision in any other proceeding.

The last sentence in Article Third stresses the importance of confidentiality in arbitration proceedings. AF, the arbitrator, and all participants must treat all matters connected to arbitration proceedings with strict confidence.
Chapter 6
Article Fourth
Non-compulsory Provisions

The parties may, with written consent, submit a claim

- that exceeds this forum’s monetary limit
- where a non-signatory wants to participate
- prior to settlement (Special Forum)
- not included in this or any other existing Agreement (Special Forum)

Once a company gives written consent, all Articles and Rules of the respective forum are applicable, and the company may not revoke its consent.

Article Fourth is the “arbitrate with consent” article. It lists situations that do not meet the criteria for compulsory arbitration but which parties may want to arbitrate voluntarily. All disputing parties must provide their consent to arbitrate in writing.

The first reason parties may consent to arbitrate under Article Fourth is to resolve a dispute that exceeds the specific forum’s monetary limit. With all parties’ consent, the panel can arbitrate claims that exceed the monetary limit.

Article Fourth also allows a non-signatory to consent to participate in a specific case with the consent of all signatory parties involved in the dispute as well as the non-signatory party. The requirement that all parties consent in writing prevents nonmembers from “picking and choosing” which cases to submit to arbitration. Because of the compulsory provisions of the Agreement, signatories do not have the opportunity to select cases.

In Special Arbitration, at least one of the disputing parties must settle with the claimant(s) to invoke the Agreement’s compulsory provisions. Article Fourth, subparagraph (a) permits consenting parties to arbitrate a specific underlying issue before settling all claims related to an accident, occurrence, or event. Aside from saving legal expenses, the parties may consent to arbitrate in this situation in order to have certified arbitrators with insurance experience resolve the dispute, as opposed to a lay jury.

Article Fourth, subparagraph (d) permits insurers to submit a claim issue not included in the Special Agreement or any other existing Agreement. If the dispute belongs in another program, participants must use the applicable program. However, the disputing parties may submit a companion claim to Special Arbitration for a controversy that belongs in another program if it relates to the Special case. Parties may also submit a claim to Special Arbitration that does not fall under an existing program. This provides the parties with an alternative to litigation, even though no specific forum is available for the claim type.

In either of these situations, each company must consent in writing, and such written consent should be included with the filing. This confirms the company did not file in arbitration by mistake. AF prefers that the non-signatory use its company letterhead to give its written consent and that the specific claim and desired forum be stated to avoid subsequent problems. This is particularly important when the non-signatory is a commercial insured.
who wants to submit its liability deductible/retention to arbitration.

It is very important to note the last sentence of Article Fourth. Once a company agrees to arbitrate the specific claim, it cannot withdraw its consent. It must participate in the arbitration process and abide by all of the Forum’s Articles and Rules.
Chapter 7

Article Fifth
Arbitration Forums, Inc.’s Authority

AF, representing the signatory companies, is authorized to

a) make appropriate Rules and Regulations for the presentation and
determination of controversies under this Agreement;

b) determine the location and the means by which arbitration cases are heard;

c) determine qualification criteria and provide for the selection and appointment of
arbitrators;

d) establish fees; and

e) invite other insurance carriers, non-insurers, and/or self-insureds to participate in this
arbitration program and compel the withdrawal of any signatory for failure to conform to
the Agreement or the Rules issued thereunder.

The signatories, directors, officers, staff, agents, and AF employees, as well as the arbitrators, are
not liable to and will be held harmless by any party(ies) for any negligence, act, or omission
concerning the processing, administration, or hearing of any arbitration conducted under this
Agreement.

Article Fifth empowers Arbitration Forums with the
authority to administer the arbitration process. All
of AF’s arbitration agreements contain a similar
article. The Board of Directors, representing AF’s
members, delegates this required authority and
power to Arbitration Forums.

Article Fifth (a) permits AF to make the appropriate
rules and regulations to perform its duties to resolve
disputes among members. To that end, AF recently
initiated an effort to simplify, standardize, and
streamline its arbitration process wherever and
whenever possible. Periodically, based on member
feedback, AF updates the rules to reduce ambiguity
and simplify the language.

Article Fifth (b) permits AF to select the location of
its offices and places to conduct the arbitration
hearings. AF’s marketing and operations staffs are
constantly evaluating and striving to satisfy
members’ needs. As part of this evaluation process,
AF considers the number of filings from a particular
area and availability of certified arbitrators.

Subsection (c) of Article Fifth gives AF the right to
determine qualification for selection and
appointment of arbitrators. Each member company
identifies and provides highly qualified individuals
to serve as arbitrators. Currently, arbitrators must
have at least five (5) years of claims experience and
obtain his or her supervisor’s approval to volunteer and attend hearings. Some forums (Property and Special) have mandatory certification for arbitrators.

Article Fifth, subsection (d) provides AF with the authority to establish the arbitration filing fees. The purpose for AF’s filing fee is to cover the cost of providing arbitration services from filing to resolution of the dispute. All revenues are expended in providing the best possible service to its members. AF is a not-for-profit organization. Its Board of Directors, consisting primarily of senior claim executives from AF’s member companies, must approve any change in the filing fee.

Article Fifth (e) provides authority to encourage membership and participation of property and casualty insurance companies, self-insureds, and commercial insureds with large retentions or large liability deductibles. There are no initiation dues or membership fees connected with becoming a member of the Forum. This subsection also authorizes AF to force a member to withdraw from the Forum if the member fails to follow the Arbitration Agreement or comply with the Rules.

The last paragraph of Article Fifth contains the exculpatory clause for Arbitration Forums, which protects the named parties from liability on grounds of negligence, act, or omission.
Article Sixth demonstrates how simple it is to withdraw from an arbitration program. All AF requires is notice in writing from an individual in a senior-level position who has the authority to make nationwide contract decisions on behalf of his or her company.

The withdrawal is effective 60 days after AF receives the notice of withdrawal, except for any case pending arbitration.

A withdrawing company should not file for arbitration during this 60-day waiting period unless it is willing to have the panel hear the case. All cases filed by or against the withdrawing member during the 60-day waiting period are still subject to the provisions of the program and the member must honor all awards. Once AF settles the last pending case and the parties comply with the decision and award, the withdrawal becomes effective.

A company cannot withdraw its membership to prevent an arbitrator from hearing a case. The member must request withdrawal in writing, and the arbitrator(s) must hear all pending cases.

Normally, withdrawal is not a result of dissatisfaction, but is due to the member company changing its policy. For example, a member company may merge with a nonmember or change its lines of coverage. Although not mandatory, AF prefers to know the reason for withdrawal. AF can use this information to take remedial actions and/or improve the program for the remaining members if needed.
Chapter 9

Preamble and Condition Precedent

AF created the following Rules and Regulations under the authority of Article Fifth (a) of the Arbitration Agreement (referred to as the “Agreement” in the rules). The company, known as “signatory” in the rules, signs the Agreement with AF. As a condition precedent to using these Rules and Regulations, 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 name and address, insured name, and claim file number for the adverse party(ies). Failure to list current and correct information may cause a filing to be closed or the decision to be voided.

The Preamble emphasizes arbitration’s condition precedent. The condition precedent is an act that must take place before proceeding with arbitration and using the applicable rules. As in all programs, AF wants the parties to attempt to resolve their particular dispute(s) prior to filing arbitration. If the parties cannot resolve their dispute, AF’s minimum requirement is for the filing company to obtain the correct and current representative’s name and address, insured’s name, and claim file number for all adverse parties. Once the filing company has obtained the correct information, it has met the condition precedent and may file arbitration.

If the responding company’s name, address, insured, or file number is missing or incorrect, AF may withdraw the case, and it will not go forward to hearing. AF cannot administratively process a case if there is insufficient information to send a notice of hearing. Likewise, a decision may need to be voided if it is brought to AF’s attention following a hearing that proper notice may not have been given.

The condition precedent is a bilateral obligation. If the filing form is the responding company’s first notice of the claim or demand, then it should contact the filing company representative and attempt to settle the claim. If the parties fail to settle the dispute, a response needs to be filed at least 10 business days before the hearing date (see Rule 2-2). The responding representative should also add or correct any missing or erroneous entries when filing an answer.

A frequent question arises when a claim has been assigned to a third-party administrator or some other outside party. In these cases, if the filing company representative has been dealing with this person, i.e. has spoken to or exchanged correspondence with, he/she should include their information on the filing since they are handling the claim on behalf of the member.

By satisfying the condition precedent, the parties can now begin applying and complying with the program’s Rules and Regulations. The following chapters will describe this process.
Chapter 10

Rule 1-1

Geographical Jurisdiction

The Agreements limit jurisdiction to accidents, occurrences, or events occurring within 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. For Medical Payments Arbitration, compulsory arbitration is applicable in states where medical payment subrogation claims are permitted by statute or judicial decision.

Rule 1-1 establishes the geographic boundaries for compulsory arbitration. AF’s current jurisdiction is the entire United States, Puerto Rico, and the United States Virgin Islands. Unless a local law restricts hearing a case that falls within an Agreement’s compulsory provision, AF has the power and right to apply and enforce the Agreement and Rules within these boundaries. For PIP, AF’s jurisdiction is limited to those states that allow for recovery rights and shall conform to those statutes or endorsements. AF has the power and right to apply and enforce the Personal Injury Protection Agreement and Rules within these boundaries.

Although AF attempts to hear cases where the incident occurred, jurisdiction can change to another state. For example, Florida arbitrators hear cases from Puerto Rico and the Virgin Islands. We currently do not have hearing facilities outside the 50 states. If all involved parties agree, the case can be heard at any hearing location. Regardless of where arbitrators hear the cases, they must apply the correct local law. For claims arising from accidents in Puerto Rico and the Virgin Islands that are heard by Florida arbitrators, it is important that the parties provide applicable statutes and case law.

Further, as noted in Chapter 2, some states have statutorily mandated the use of intercompany arbitration to resolve disputes. Some states have even designated AF as the arbitration administrator. These statutes must be referred to for any questions regarding jurisdiction.
Chapter 11

Rule 1-2
Suit Dismissal and Statute of Limitations

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 the suit is not dismissed/discontinued, the party seeking removal may be entitled to statutory interests and all costs and expenses the court may deem appropriate.

Rule 1-2 informs all parties of the requirements associated with removing a case from litigation that belongs in compulsory arbitration.

A filing company must make every effort to determine if the controverting party is a member of the applicable Agreement. If legal proceedings begin and then it receives notice that the other party is a signatory (member) to the Agreement, it must withdraw the case from litigation.

They may file in arbitration any time prior to the running of the statute of limitations. However, if the applicable statute of limitations lapsed while the case is in litigation and the suit was dismissed because arbitration has jurisdiction, the filing company has 60 days to file arbitration to protect against a defense based on the statutes expiration. The filing of litigation will toll the statute of limitations for the purpose of filing arbitration, but not for an infinite period of time. The responding company can raise a valid affirmative defense if arbitration is not filed within 60 days from suit dismissal.

One frequently asked question concerning Rule 1-2 is what obligation the party filing litigation has when the matter is excluded from arbitration’s jurisdiction per Article Second. Must it file arbitration and have the case removed prior to filing litigation? The answer is “no.” If a filing company has a claim that exceeds a responding company’s policy limits, for example, the filing company can proceed in litigation to recover the full claim amount. As another option, it is free to file in arbitration to have an arbitrator render a decision on liability and/or damages to see if the award exceeds the policy limits. If it does not, the arbitrator will award the proven damages and the parties will reap the benefits of intercompany arbitration. If the award exceeds the responding company’s policy limits and the filing company has not agreed to accept an award up to the policy limit, the arbitrator will close the case, as jurisdiction is lacking. The filing company can then pursue recovery outside of arbitration’s jurisdiction.

Another question concerns the scenario when the matter filed in litigation has been heard, i.e. a default or verdict rendered against the insured. Must arbitration be filed once the insured notifies its carrier of the verdict or default and that carrier notifies the filing carrier that they are signatory? The answer, again, is “no”. The filing carrier may file arbitration voluntarily – forgiving the default or verdict against the insured, however, arbitration would not be compulsory at that point.
Chapter 12

Rule 1-3

Monetary Limit

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 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 the Company Claim Amount.

The purpose of Rule 1-3 is to specify and clarify the respective Forum’s monetary limit for compulsory arbitration. Aside from stating the applicable monetary limit, it specifically addresses how the monetary limit relates to different types of companion or related claims; a counterclaim; legal fees arising from the same accident, occurrence, or event; and the insured’s deductible interest.

Article Fourth of the various Arbitration Agreements allow the participants to waive the monetary limit should they desire to resolve a dispute in arbitration that exceeds the forum’s monetary limit. It is also permissible for the filing company to reduce its claim amount so that it does not exceed the monetary limit in cases where it is desirable to resolve the claim in arbitration (for example, the total claim amount is $110,000, and it will not be cost-effective to pursue recovery of the difference in litigation).

The monetary limit applies on a per claim basis rather than an aggregate of all claims arising out of the same accident, occurrence, or offense. In other words, there can be a Company Claim Amount of $100,000 or less on several claims arising from the same occurrence, and each would be subject to compulsory arbitration. The program monetary limit applies separately to each claim.

The second condition in Rule 1-3 is the claim and companion claim under different lines of coverage. A claim and companion claim are similar to the claim and counterclaim situation. As with the claim and counterclaim, AF considers a claim and companion claim as two separate claims. Therefore, any one claim arising from the same accident or incident cannot exceed the monetary limit of its forum, but the claims combined total can amount to more than the limit. For example, there could be a $50,000 Automobile Subrogation claim in the Auto Forum and a $150,000 Special Arbitration claim. Although the total amount sought from the responding member equals $200,000, AF would still arbitrate the companion filings because the individual claim amounts do not exceed the monetary limit of their respective forums.
Another question often asked concerns Property Subrogation Arbitration and whether an applicant files one or three separate applications if it has a property claim wherein it has made a payment for the building coverage, one for the contents coverage, and one for the business interruption coverage. These are considered one claim to be filed on one application and would be subject to a single forum limit of $100,000. If the aggregate amount of these payments exceeds the $100,000 compulsory limit, the applicant would need to be willing to limit its recovery to the $100,000 forum limit or secure the respondent’s consent to arbitrate the case at the total claim amount. If the applicant were to file them separately, the respondent could assert an affirmative defense that jurisdiction is lacking, since the aggregate amount exceeds the compulsory limit.

An arbitrator can award legal fees, if sought, and the legal fees are not included in the $100,000 limit unless the policy limit includes legal fees. As defined, legal fees are attorney fees, court costs, and all other expenses directly related to the prosecution or defense of a lawsuit. An example would be if the Auto applicant has a Company Claim Amount of $85,000. The applicant also paid $20,000 in court costs and attorney fees because the responding member raised an invalid affirmative defense against compulsory arbitration (see Rule 2-8). Even though the Company Claim Amount plus the Legal Fees Sought equal $105,000, Auto arbitration would still be compulsory.

Rule 1-3 (d) further clarifies that the monetary limit for the amount of damages does not include the insured’s deductible. For example, a Property applicant has a $99,000 Company Claim Amount plus a deductible of $5,000 (total damages are $104,000). AF will hear the case because the compulsory monetary limit does not include the $5,000 deductible, and the remaining $99,000 is within the monetary limit.
Chapter 13

Rule 1-4
Implieving

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.

The filing company has the initial obligation, when filing its claim in arbitration, to name all potentially liable parties (members or consenting nonmembers). There may be cases, however, where the filing company either chooses to pursue recovery versus a specific member(s) or is not aware of other potentially negligent parties. Rule 1-4 provides guidance concerning cases involving additional, unnamed parties in arbitration.

The rule permits the responding company to “implead” additional members or consenting nonmembers when it submits its response/answer or argue the parties respective negligence. Impleading is the process whereby a party brings another, previously unnamed party into an action because it believes that party may be, to some degree, liable for the accident, occurrence, or event.

In these cases, the responding company may add the unnamed member or consenting nonmember or simply argue its respective negligence/liability of the unnamed party in its contentions.

Upon its receipt of the answer, the filing company may amend its filing to add the member or consenting nonmember (if the responding company did not do so), allow the case to proceed to hearing as filed, or withdraw its filing. If the case proceeds to hearing, the arbitrator(s) will determine the percentage of liability, if any, for all alleged tort feasors but only render awards against each named party based on the facts. In other words, the named responding company will only pay the percentage of the award amount, if any, based upon the liability finding against its insured. (This would also apply to an uninsured party, an unknown party such as a phantom vehicle, or a party that cannot be brought into litigation.) By allowing the case to proceed to hearing, the filing company thereby agrees to accept any award against the participating responding companies and waives its right to bring any subsequent action against any other party – including refiling arbitration versus another member.

In the event a potential tortfeasor is not signatory and does not consent to participate in the arbitration or the allegation of another party’s negligence is a surprise, the filing company can also withdraw its filing to pursue all parties in another venue outside of arbitration, such as litigation, or it refiles arbitration at a later date, subject to the applicable statute of limitations.
Chapter 14

Rule 2-1
Filing Process

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 amendments, to the responding parties with notification of the hearing date. Amendment(s) must be made no later than 10 business days before the hearing. In addition, AF must receive all evidence no later than 10 business days before the hearing. Documents not received 10 business days before the hearing will not be accepted.

For cases not filed via AF’s Web site, the filing company must forward a copy of the completed application and contentions sheet, as well as any amendments, to AF and any responding companies. Amendment(s) must be made no later than 10 business days before the hearing. In addition, AF must receive all evidence no later than 10 business days before the hearing. Documents not received 10 business days before the hearing will not be accepted.

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.

Rule 2-1 provides guidelines and specifies what actions must be taken and by whom when arbitration is filed either via AF’s Web site or by mail. When arbitration is filed online, AF mails a copy of the application, contentions sheet, and notice of hearing to the responding member(s) within 48 hours of submission. When arbitration is not filed online, the filing company must mail AF and the responding member(s) a copy of its application and contentions sheet; upon their receipt, AF will mail the responding company a hearing notice. The filing company must also mail its evidence to AF. It is not required for the filing company to provide copies of its evidence to the opposing party, but it may do so voluntarily to foster a settlement.

The rule also clarifies that all documentation must be submitted by the close of business no less than 10 business days before the hearing date. If a filing is to be amended, it must be amended online by the specific “documents due date” or, if submitted via mail, must be received by AF by the “documents due date.” The adverse parties also must receive a copy by this date to avoid a rehearing should the decision be voided (See Rule 2-2). Last, AF must also receive any evidence that is being submitted for arbitrator consideration by the documents due date.

It must be noted that USPS holidays and/or AF office closings may affect what constitutes “10 business days” before the hearing. The example below outlines how AF determines the “documents due date.” However, in all instances, the date listed on AF’s hearing notice or Web site for the specific case will be controlling.

In our example, the 31st is the hearing date. You begin by counting the day before: the 30th is one day prior; the 27th is two days prior; the 26th is three days prior, etc. In this example, AF and the
adverse parties must receive the appropriate documents by the close of business on the 16th. The last paragraph is specific for Special Arbitration filings. It specifies a 180-day time period following payment to the claimant. The 180 days is an administrative time limit to expedite the dispute resolution process. This 180-day time limit is not a statute of limitations. If failure to file within 180 days causes a party prejudice, it may plead this as an affirmative defense on the contentions sheet. If the arbitrator determines the delay did not cause prejudice, he/she will decide the matters at issue.
Chapter 15
Rule 2-2
Responding Process

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 cases answered via AF’s Web site, AF will notify the filing company electronically or mail it a copy, depending on the filing method used. The answer and any amendments must be received by the date AF posted to allow sufficient time for mailing, when needed. In addition, AF must receive all evidence no later than 10 business days before the hearing. Documents not received 10 business days before the hearing will not be accepted.

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 within ten (10) business days of 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.

The 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 and/or contentions sheet no later than 10 business days before the hearing, 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.

Rule 2-2 provides the responding company with instructions and time limits for replying. AF imposes the time limit to provide all parties with sufficient time to prepare for the hearing.

The responding company has two options to submit its answer. It may answer via AF’s Web site or by mail.

When answered via AF’s Web site, AF will notify the filing company electronically that an answer has been filed, if the filing company filed online. The
filing representative will be able to click on a link to the case that is embedded in our electronic notice to review and/or print the response, if needed.

If the filing company did not file online, AF will mail it a copy of the response. The responding company must still mail its evidence to AF, and AF must receive it no later than 10 business days before the hearing. Any amendments must also be made prior to 10 business days before the hearing.

When answered by mail, the responding company completes its section of the application and its own contentions sheet, asserting any affirmative defenses, deferment justification, or damages arguments. It mails a copy of each document, as well as its evidence to AF, and a copy of each document to the filing company and any other member named on the application. When selecting a delivery method, especially if the end of the time limit is close, the company should consider that it will have the burden of proving delivery through a third party should any party question its meeting the time requirement. Proof of delivery will include: overnight mail delivery confirmation, Certified Mail receipt, fax transmission confirmation, email receipt confirmation.

If the responding company believes the filing company’s insured is at fault or at least partially at fault, it may file a counterclaim to recover damages to its insured. The counterclaim must be filed in time for the arbitrator to hear it with the original claim. The only exception to the requirement of filing the counterclaim together with the original claim is if the responding company can prove that it paid its insured less than ten business days before the hearing date or anytime thereafter. It can even be after the original hearing date. There are no “counterclaims” in Special Arbitration. If Company 2 contributed to the third-party settlement for which Company 1 seeks contribution, it includes its payment information on that filing. If Company 2 seeks contribution on another third-party claim resulting from the same loss, it must submit a separate filing.

It must be noted that USPS holidays and/or AF office closings may affect what constitutes “10 business days” before the hearing. The example below outlines how AF determines the “documents due date.” However, in all instances, the date listed on AF’s hearing notice or Web site for the specific case will be controlling.

In our example, the 31st is the hearing date. You begin by counting the day before: the 30th is one day prior; the 27th is two days prior; the 26th is three days prior, etc. In this example, AF and the adverse parties must receive the appropriate documents by the close of business on the 16th.
Chapter 16

Rule 2-3
Legal Fees

Rule 2-3 addresses the **Legal Fees** section of the application and the need to enter an amount in this section, if applicable. A company must list the legal fees amount if it is seeking to recover legal fees. If this entry is left blank, legal fees will not be part of the award.

In the **Legal Fees** section, you enter the amount paid to an attorney for service performed or court costs expended in having a case removed from litigation or resulting from an improper objection to jurisdiction as related to Rules 1-2 or 2-8. Such fees must be “reasonable.”

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 must be listed and submitted as evidence.
Chapter 17

Rule 2-4
Affirmative Pleadings/Defenses

The parties must raise and support affirmative pleadings or defenses in the Affirmative Defenses/Pleadings section of the contentions sheet or they are waived. If a denial of coverage is being pled (see Denial of Coverage definition), a copy of the denial of coverage letter to the party seeking coverage for the loss must be provided as part of the evidentiary material submitted. If provided, the case will be administratively closed as lacking jurisdiction. If not 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.

The contentions sheet is a mandatory document containing key information about the filing as well as a listing of evidence included in the arbitration file. One of the main entries on the contentions sheet is the Affirmative Defenses/Pleadings section. Rule 2-4 states that this section must be utilized when a party wishes to assert an affirmative defense or pleading for the arbitrator’s consideration.

Affirmative pleadings include issues or legal doctrines that could change the allocation of damages (like bailment or joint and several liability) or reinforce the filing company’s position of liability (like res ipsa loquitur). The filing company presents its liability theory in its contentions, but the existence of an available pleading could define the amount of the award if liability is found, or emphasize the responding company’s legal duty in the case. For example, the contentions present the theory that the responding company’s insured contributed to the accident that caused its damages. Bailment is asserted as an affirmative pleading, and specifies that if only 1 percent liability is proven versus the responding company’s insured, the filing company is entitled to an award of 100 percent of its damages. If proven, 100 percent will be awarded.

An affirmative defense, on the other hand, is any issue that does not address the dispute itself but rather raises issues that may be impediments to the arbitrator’s right to consider the dispute itself. An affirmative defense goes to jurisdiction. Regardless of who is at fault or what damages are owed, the case cannot be heard because arbitration lacks jurisdiction over the matter. Affirmative defenses include legal bars to a right of recovery (like the expiration of the statute of limitations), the exclusions listed in the Agreement’s Article Second, and other specific rules like 2-11.

Another example of a legal bar to a right of recovery that would be asserted as an Affirmative Defense is a verbal or monetary threshold for a BI settlement in a PIP state. If a claimant would not be entitled to a third party settlement because a threshold was not met, an award could create a cause of action that does not exist in law, making the dispute subject to exclusion (b) in the Arbitration Agreements. Thus this would be raised as a challenge to arbitration’s jurisdiction in the Affirmative Defense section of the response.

An affirmative defense or pleading is valid only if a party properly raises and supports it. An arbitrator cannot raise these issues for a party.

In addition to specifying how an affirmative defense must be raised on the contentions sheet, Rule 2-4 specifies what evidence must be provided if denial of coverage is raised as an affirmative defense. The evidence is a copy of the denial letter to the specific
party seeking coverage for the loss under the responding company’s policy.

First, let’s look at to whom the denial letter should be addressed. The rule says the denial letter is “to the party seeking coverage for the loss,” not “to the Named Insured.” This is significant because the named insured is not the only entity who may be looking for coverage under a policy and for whom coverage is being denied. For instance, in the case of a non-permissive driver, the driver is a potential “insured” under the policy and it is coverage for his liability that is being denied. The named insured in most situations is still fully covered, so a letter to him is information about a denial of coverage—it is not the actual denial. It is the non-permissive driver who has personal liability in the absence of coverage, and it is he to whom coverage must be denied. In short, the denial of coverage letter must be addressed to the party for whom coverage is actually denied, not the named insured whose coverage is still available. The named insured may well be interested in the information, but is not directly affected because his coverage is usually intact.

Please note also that since the denial letter should be addressed to the individual or entity for whom coverage is denied, indication that that entity was only copied in on a letter addressed to the named insured or someone else regarding the denial is not sufficient for purposes of this rule.

Further, in some situations, there could be allegations in the contentions against both a driver and the named insured, such as for leaving his keys in the car or elsewhere a non-permissive user had easy access to them. In that instance, coverage must still be denied he the driver for his negligent driving and an affirmative defense raised, but there may well be coverage for the named insured’s alleged negligent act. Therefore the affirmative defense would not allow the case to be withdrawn, but the case would be heard but ONLY for the alleged negligence of the named insured, i.e., the party for whom coverage has NOT been denied.

One last point, the letter must affirmatively state that the company is denying coverage for the claim. The intent must be clear. On occasion we receive letter that do not show a clear intent to deny coverage, using words like “we may have to deny coverage” or “please call us so we can handle this matter.”

The second issue concerns when a denial of coverage letter is needed. The answer is basically any time it is possible to send it. Obviously, if the non-permissive user is unidentified, as in the instance of a stolen vehicle, a letter cannot be sent to him. Likewise, if no policy exists for the alleged insured, and the insurer has no information about him, a letter cannot be sent. In most other situations, as long as the entity for whom coverage is being denied is identified, a copy of the denial letter to him should be provided. If no denial of coverage letter has been sent to the insured, the respondent should proactively address the lack of same for the arbitrator to consider as part of the affirmative defense.

Raising an affirmative defense does not mean that such defense is necessarily valid. The party must also explain the grounds for the defense and submit evidence to prove it. A party should also complete the entire application and contentions sheet even when raising an affirmative defense, as the arbitrator(s) could deny it and continue to hear the case.

Last, according to Rule 2-4, and reinforced by rule 3-5 (a), the arbitrator will consider only affirmative defenses included in the Affirmative Defense/Pleading section of the contentions sheet. If the panel discovers an affirmative defense somewhere other than this section, it will inform the party in the explanation of decision of its failure to submit the defense in accordance with Rule 2-4.
Chapter 18

Rule 2-5
Contesting Damages

If a party contests damages, the amount of damages in dispute must be clearly outlined for the arbitrator in the Damages section on the contentions sheet.

Like the Affirmative Defense section on the Contentions Sheet, the purpose of the Damages section is to clearly communicate that damages are being contested, or at issue.

The filing company should itemize its payments in this area. The AF online filing process handles this easily by asking for the dollar amount for each damages type selected, i.e., auto collision, rental, towing/storage. The damages types and amounts are then properly listed in the Damages section of the Contentions Sheet that is presented to the arbitrator. When determining if damages were proven, the arbitrator can compare the Company Claim Amount to the itemized amounts and the damages evidence. For example, if the filing company lists a Company Claim Amount of $2,700, the arbitrator can verify that this is comprised of a collision payment of $2,300 and a rental payment of $400, and that these damages items are supported by evidence, i.e. estimate, rental invoice.

If the responding company contests the damages claimed, it must clearly outline its position in the Damages section. When possible, it should also provide its itemization of damages to show the amount that it feels the settlement should be. Using the example above, if the responding company feels that $400 of the collision damages were prior damages and that rental should only be $300, it would present its damages argument and provide its itemization. For example, “Based on the prior damage and excessive rental, we believe we only owe $1,900 plus $300 for a total of $2,200. Again, AF’s online filing process makes it easy to contest damages by specifically asking the responding company if it is disputing damages. If “yes,” a text area appears wherein the representative can type its position and provide its itemization or damages amount.

It must also be stressed that if the Damages section is blank, damages are not at issue. The arbitrator will only verify that the filing company’s itemized payments are supported. The arbitrator will not review whether the payments were appropriate, reasonable, excessive, etc.

In Property, a Respondent may need to raise the issue that part of the claimed damages (for instance work product or costs related to mold) are not covered under their policy. These issues would be raised as a challenge to damages in the Damages section of the response, not as Affirmative Defense.

For example, claimed damages for a water loss include $3500 for repairs to the building, $700 for personal property and $1200 for mold remediation. In the Damages section of the Contentions Sheet, the Respondent would raise the issue of their mold exclusion and when possible itemize the amount of the excluded damages. The arbitrator can then consider the payment supports from the Applicant and if liability is established, adjust the award for those excluded damages.

In these cases, the Respondent could also implead/add the other carrier or the Applicant can withdraw the arbitration and pursue recovery of the full claim outside of arbitration.
Chapter 19
Rule 2-6
Companion Claims

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.

It is AF’s intent to hear all related, or companion, claims that arise from the same accident, occurrence, or event at one hearing. This ensures consistent decisions and eliminates the time and cost of having multiple hearings to resolve multiple claims arising from one loss or accident. That said, it is not required that companion claims be heard together, nor is a companion claim barred from being filed if it is not heard with an initial filing, like a counterclaim is.

Per the AF Definitions, a companion claim is any additional claim(s) by or against a participating party arising out of the same accident, occurrence, or event, which falls under the same or another AF compulsory forum. Examples include:
- An applicant files an Automobile application versus two respondents and one respondent files an Automobile application versus the other respondent only. (If the applicant is included, this would constitute a counterclaim, not a companion claim.)

In order for companion claims to be heard together, they must be filed together or the parties must relate them online when filed. Alternatively, if the relationship becomes known after they are filed, the parties may contact AF to have them related for hearing together.

If neither step is taken and the companion, or related, filings proceed to hearing separately, the decisions will be binding even if they are inconsistent. Only with the consent of all parties can the decisions be voided and the matters scheduled to be reheard together.
Chapter 20

Rule 2-7
Pre-hearing Settlement

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.

Rule 2-7 is straightforward and advises the filing company to immediately withdraw its filing if settlement is reached with the responding company prior to hearing. This prevents the needless hearing of a case when the parties have amicably resolved the dispute and will reduce case cycle time.

The filing company can easily withdraw its filing online or it may notify AF in writing via fax, letter, or e-mail of the settlement.

It should be noted that AF cannot withdraw a case from arbitration upon the responding company’s request. Only the filing company can withdraw its filing.
Chapter 21

Rule 2-8
Case Restoration After Improper Objection to Jurisdiction

If the responding company pleads an affirmative defense and AF or the arbitrator(s) closes the case based on no jurisdiction and it is subsequently discovered that arbitration was properly filed, the filing company may refile 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.

Rule 2-8 cautions the responding company about the penalties associated with raising an improper affirmative defense that removes a case from arbitration’s jurisdiction when jurisdiction existed. It also gives the filing company the right to recover any reasonable legal fees and court costs it incurs because of the improper assertion of an affirmative defense.

As an example, when a respondent asserts “no coverage”, AF accepts this in good faith and closes the case. The applicant is free to pursue the “uninsured” party or another liability carrier, if applicable.

If, through litigation, it is determined that the original filing was proper and that the case was closed in error (i.e., there is coverage), the filing company will refile arbitration. If it incurred legal expenses due to the initial removal of the case, it is entitled to recover these expenses. If not reimbursed by the responding company, the filing company may list these expenses in the Legal Fees section of the application, outline why they are being sought in its contentions, and provide evidence/proofs to support the amount.
AF recognizes that there are instances where a party requires additional time to prepare and/or submit documents. There are also times when a party introduces some new information in its answer and the opposing party wants to submit a rebuttal. Rule 2-9 addresses these needs. To maintain an expedited process, however, AF will honor only one request per party to reschedule a hearing date. A party must request the reschedule at least three (3) business days prior to the hearing and have complied with Rule 2-1 or 2-2.

The reference to Rules 2-1 and 2-2 is important because it describes the proper process and timeframes to provide supporting documents or respond to a case. If the filing company has not provided all of its documents or the responding company does not file its response by the close of business ten (10) days prior to the hearing, it may not use Rule 2-9 to overcome the failure to meet that deadline. However, until the close of business ten (10) days prior to the hearing, any party has one request available to get AF to reschedule the hearing.

Once AF has received the request and changed the hearing date, it will notify all parties of the new hearing date. AF will charge a rescheduling fee to the party who requested the reschedule.
Chapter 23

Rule 2-10

Deferment

Any party may request a deferment of the hearing. The party must provide the basis for the request in the Deferment Justification section of the contentions sheet. AF will charge the requesting party a deferment fee.

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, except the affirmative defense of the statute of limitations.

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.

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.

AF will notify all parties of the new hearing date and charge the requesting party a fee.

A deferment is a one-year postponement of a hearing for which AF will charge the requesting party a deferment fee. A deferment is typically requested when a companion claim or suit exists and the outcome of it will affect the case in arbitration. Some examples include: there is a policy limit and the companion claim/suit must be resolved before the member’s claim or there is a potential for additional claims to be filed against the policy limits (i.e., multi-vehicle accident); discovery or investigation is still in progress and the results are needed to respond to the arbitration filing; coverage is under investigation or is being determined; or an SIU investigation is in progress.

A party requests a deferment by checking the Yes box next to I request One-Year Deferment on the application and providing its rationale for the deferment request in the Deferment Justification section of the contentions sheet. As noted above, the requesting party must prove the deferment is necessary. This can sometimes be difficult to prove. The presence of a suit does not immediately infer that the panel will gain additional information to guide it when the parties resolve the suit. On the other hand, the arbitration decision will not affect the court decision because the Arbitration Agreements specifically state that arbitration decisions are neither res judicata nor collateral estoppel.

In the Automobile, Property, and Special Forums, a deferment request by the filing company is automatically granted. It is presumed the filing
company has a valid reason to delay the arbitration. Most often, it has filed arbitration simply to toll the statute of limitations and protect its interest on its claim until other issues are resolved.

When the responding company requests the deferment, the case will proceed to hearing. At the hearing, the arbitrator(s) will evaluate the justification for the deferment request. The arbitrator(s) will also consider objections to the delay of the arbitration from the other involved parties, if raised. If the arbitrator(s) upholds the deferment request and concludes the deferment is for good cause, AF will retain the case in a deferred status for a one-year period from the original filing date. If an arbitrator determines that the reason for deferment is invalid, the hearing continues. The arbitrator will hear the case immediately and decide the issues of liability and/or damages. Therefore, all parties must provide all file materials, as the case can immediately go to hearing on the original disputed issues.

In the Medical Payment and PIP Forums, all deferment requests are automatically granted and the hearing is postponed for one year. However, the adverse party may challenge the deferment request if it believes a one-year delay is not needed. If challenged, the case will be processed to a hearing so an arbitrator(s) can consider the deferment issue. As above, if the deferment request is upheld, the case will remain in deferred status for one year. If the arbitrator denies the deferment, he/she will proceed to hear the case and render a decision on liability and/or damages. If the party requesting or granted the deferment no longer requires the deferment during the year, it must notify AF and the opposing party that the case is ready for hearing. AF will then schedule the case for hearing. It is also strongly recommended that the party amend its response, if necessary, to address an affirmative defense or other issue that the deferment resolved. For example, a responding company requests a deferment to postpone the arbitration hearing because of a policy limit issue; the filing company’s claim is for a portion of the policy limit, but other potential claimants exist (i.e., multi-vehicle accident). Hopefully, all claims are settled on a pro-rated basis during the deferment period. If not, the responding would amend its response to remove the deferment request (this would schedule the case for hearing). In addition, it should amend its response to assert the affirmative defense of policy limits, if the amount sought by the filing company exceeds the amount remaining.

A responding company also has an obligation to raise any objection to jurisdiction as an affirmative defense in its answer even if it or another company has requested a deferment. This allows the filing company to seek other means for recovery if a valid objection to jurisdiction exists. There is no need to delay the arbitration proceeding. When a company raises a jurisdictional issue, the arbitrator will consider the jurisdictional question first. If the arbitrator determines AF has jurisdiction, he or she will then consider the deferment request. If the arbitrator upholds the affirmative defense and decides AF does not have jurisdiction, it will withdraw the case. AF cannot defer a case over which it has no jurisdiction.

Last, AF sends all involved parties a hearing notice when the deferment period is set to expire and the case is scheduled for hearing. If there is a need for another one-year deferment, a party can request and justify the need for another deferment. It can do so each year until the companion claims or other issues are settled. Likewise, an adverse party may challenge each deferment request.
Chapter 24

Rule 2-11
Product Liability Evidence

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 the defense of the claim.

AF will notify all parties of the new hearing date and charge the requesting party a fee.

Intercompany arbitration is designed to provide a fair and neutral means for resolution of disputes between/among signatory companies. For product liability cases, Rule 2-11 assures that the responding company has been given a reasonable opportunity to inspect the allegedly defective product in order to prepare its defense.

Reasonable accommodations must be made by both the filing and responding company. It is not always the requirement that the responding company go to the alleged defective product. In certain situations, it may be more reasonable for the filing company to send the product to the responding company.

If the responding company has requested but has not been given a reasonable opportunity when such inspection is critical to its defense of the allegations made against its insured, it would be unfair for the arbitrator(s) to proceed with only the filing company’s description of the defective product to consider. However, if “reasonable accommodations” have been made for the responding company to inspect the product and it chose not to do so, the rule will not protect the responding company and will not prevent the case from being arbitrated.
Chapter 25
Rule 2-12
Appeal Process (Property and Special Forums)

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 fax 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 decisions 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.

Members recognize and support the need for an arbitration process that is expedited and provides a binding resolution. Some members, however, were apprehensive about the requirement to accept a decision on issues of fact or law as final and binding without the right of rehearing or appeal. This concern was especially common on the complex, high-dollar claims associated with Property and
Special Arbitration. In response to this concern, AF established Rule 2-12, which outlines the criteria and procedure for appealing a decision in the Property and Special Forums.

Per Rule 2-12, the right to appeal a decision is limited to those parties that ‘participated’ in the original hearing. So, if a Respondent (or Company 2 in Special) does not submit a response, or participate in the original hearing, they may not appeal the decision afterwards.

To appeal a Property decision, the Company Claim Amount must be $25,000 and above. To appeal a Special decision, the Total Settlement Amount must be $100,000 and above. In addition, the appealing company must submit the appeal within 30 days of the decision publication date and must pay a non-refundable fee for the appeal. (AF’s current fee schedule is available at www.arbfile.org).

The appealing party must file the Decision Appeal Form, which is available on AF’s Web site. On the form, the appealing company provides their contact information, as well as the docket number of the case being appealed. By signing and dating the form, the party acknowledges the right to appeal and the fee for filing the appeal. Next, the appealing company will check a box on the form to indicate the type of error they believe the arbitrator(s) made. They may also provide a brief rationale for the basis for the appeal, i.e., the specific objection to the decision and the basis for the objection. The Decision Appeal Form may not be altered in any manner. Its intent is to concisely capture the basis for the appeal without allowing for further arguments and/or discussion of the parties position.

The party sends the Decision Appeal Form to AF’s Service Quality Department at corporate headquarters via certified mail within 30 days of the publication date of the decision. AF will not consider an appeal sent after expiration of the 30-day time limit. AF recommends sending a courtesy copy to all parties involved in the appeal process.

Upon receipt of the Appeal Form, AF will notify the other involved parties. Each adverse party has 30 days from the postmark date of the notification letter to submit its position on the appeal and the basis for such position. Again, AF recommends sending a courtesy copy to all other involved parties. AF will not reschedule an appeal hearing and an adverse party waives its right to respond after the 30-day limit expires.

After the time limit expires, AF selects a new panel, not including any arbitrator from the original panel, to sit on the appeal panel. The appeal panel will consider the original file, decision, and appeal positions. A party cannot submit new evidence or present new witnesses or appear before the appeal panel. The appeal panel’s decision will be final and binding without the right of rehearing or further appeals.
Chapter 26

Rule 3-1

Notice of Hearing

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.

Rule 3-1 establishes the procedure for notifying all disputing parties of the scheduled hearing.

When a case is filed online via AF’s Web site, AF will mail a copy of the filing and contentions sheet (per Rule 2-1) to the responding company(ies) along with the notice of hearing. The filing company is not sent a hearing notice as it is notified of the hearing information immediately upon submitting the filing.

For cases not filed online, AF will mail a hearing notice only to the parties. The filing company must send a copy of its filing to the responding companies (see Rule 2-1).

AF relies completely on the accuracy of the information provided by the filing company in compliance with the condition precedent. For this reason, if AF’s hearing notice is returned as being undeliverable, AF will close the case. The filing company will need to submit a new filing using the correct/current address information for the responding company.

The hearing notice provides a level of protection for the responding company. It provides notification that arbitration has been filed against it, that the case is scheduled for hearing, and the date that its answer must be received. If the hearing notice is the responding company’s first notice of arbitration, it should immediately review the case online, if access exists and the case was filed online, or it should promptly contact the filing company to request a copy of the documents. If additional time is needed to prepare and submit its response, it should contact AF about securing a reschedule of the hearing per Rule 2-9.
Rule 3-2 clarifies and strengthens the time restrictions imposed on the responding company to answer by specifying that its failure to respond in a timely manner will not delay the hearing.

Rule 2-2 establishes that the response must be received no later than ten (10) business days prior to the hearing date, and that documents not received within this timeframe will not be made available at the hearing. Per Rule 3-2, the failure to comply will not postpone the hearing of the case either. The arbitrator(s) will decide the case based only on the documentation submitted in time, even if only the filing company’s.
Chapter 28

Rule 3-3

Arbitration Panel Size

One arbitrator will hear all cases 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 Forum – Company Claim Amount of $12,500 and above.

Special Forum – Contribution Sought Amount of $15,000 and above for disputes filed under Article First (a), (c), and (d). Coverage issues filed under Article First (b) will be heard by a three-person panel, unless all parties waive this requirement.

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 requested, the following forum order will be used to determine which monetary limit applies: Special, Property, PIP, Med Pay, Auto.

One arbitrator typically hears a case; however, the parties have the right to select a three-person panel, if desired. To ensure three-person panels are not requested on low-dollar claim disputes, Rule 3-3 establishes monetary limits to request a three-person panel.

A company may request a three-person panel by checking the box next to the statement “I request a three-person panel.” AF charges a fee when a three-person panel is requested, and the fee varies by forum. For example, in the Auto Forum a single fee is charged, while in the Special Forum a per arbitrator fee is charged. Refer to the fee schedule on AF’s Web site for more information.

AF recognizes, in most instances, the disputing parties will want companion claims heard together. This ensures consistent decisions because the same arbitrator(s) views the same facts and evidence from a perspective of all issues. In order for that to occur, that the last paragraph was included in Rule 3-3. When a party files a companion case from Automobile or another AF program with a Special or PIP Arbitration case, the rules governing the Special or PIP case will have jurisdiction over all of the cases, including the number of arbitrators who will hear the case.
Chapter 29

Rule 3-4

Adjournments

The arbitrator(s) may grant an adjournment for cause or to request briefs of law or clarification of submitted materials (including policy limits 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.

An adjournment is an interruption of a hearing at the arbitrator’s discretion for a maximum of 30 days. The determination of “cause” is at the arbitrator’s discretion. For example, an arbitrator might discover that the company submitted a case to the hearing, but it failed to attach the Contentions Sheet or attached a Contentions Sheet from another, unrelated claim file. In this instance, the arbitrator would not be able to make a determination on the case without this information, so the arbitrator would grant an adjournment. Another example might involve evidence that is listed on the Contentions Sheet but not present at the time of hearing. The arbitrator recognizes that the member intended for this material to be at the hearing and would grant an adjournment to allow the member to provide this missing evidence. This applies to individual items of evidence, however, not entire evidence packets. If a party does not submit their evidence packet timely (i.e. by the Materials Due Date), the arbitrator will not adjourn the hearing to request the entire file.

Clarification concerning a policy limits defense would be another reason to adjourn the hearing. For example, the responding company asserts the affirmative defense that it has policy limits and that additional claimants exist. The arbitrator could adjourn the hearing to get more information regarding the additional claimants (i.e., number and claim amounts) to better determine if the affirmative defense of policy limits is applicable.

To avoid any unnecessary delay, it is highly recommended that a company submit evidence to support all references to local statutes and case law. This will allow the panel to properly review this material and review the actual statue or case law. If a particular statute is cited in the contentions and the arbitrator(s) needs clarification of the statute, the arbitrator may request an adjournment, and AF will reschedule the case. This also applies to the clarification of any information included in the case file. For example, an arbitrator is not sure if he understands a critical graph included in an expert witness statement. The arbitrator can adjourn the case and request a more complete explanation of the graph.

If an arbitrator adjourns a hearing, AF will notify all parties of the new hearing date and the information/documentation that the panel requests. If AF does not receive the requested documents by the due date, the case will proceed to hearing, and the arbitrator will render a decision based on the available file material.
Chapter 30

Rule 3-5
Requirements for Arbitrator Consideration

The arbitrator(s) may only consider

a) Affirmative pleadings or affirmative defenses included in the Affirmative Defense/Pleading 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) Contested damages if specifically pled in the Damages section of the contentions sheet.

Rule 3-5 outlines specifically what an arbitrator may and may not consider, such as affirmative defenses, deferments, evidence, dollar amounts, and damages contested. It is the party’s responsibility to bring these items to the arbitrator’s attention if they apply to the case.

Rule 3-5, subparagraph (a) pertains to presenting an affirmative defense. An arbitrator cannot raise an affirmative defense for a company. A company must assert the defense in the Affirmative Defense/Pleading section of the contentions sheet, and list and submit evidence to support it (Rule 2-4). The arbitrator must decide if an affirmative defense or pleading is valid before beginning to decide the liability and/or damages issue(s). It is a good idea for a company to complete the entire contentions sheet, including its contentions and evidence as though the defense or pleading does not exist. If the arbitrator denies the affirmative defense, the hearing will continue, and the arbitrator will decide the liability and/or damages issue(s).

The second item for consideration in Rule 3-5 regards presenting a deferment request or challenge to ensure the arbitrator’s(s’) consideration. If a company requests a deferment, it must provide rationale for the request in the Deferment Justification section of the contentions sheet (Rule 2-10). The same applies to any involved company that wants to object to a deferment request. The company with the objection must also include its rationale in the Deferment Justification section.

Rule 3-5, subparagraph (c) advises each disputing party that it must list its evidence in the contentions sheet’s Evidence section for an arbitrator to consider it. Even if a case is to be represented in person, the party must still list and submit its evidence. The Arbitration Agreements and Rules do not mandate a discovery process for evidence.
The evidence listed on the contentions sheet is the only way for each company to know what another company is presenting to the arbitrator. The arbitrator(s) matches the evidence list with the attachments and verifies that the evidence supports the allegations and/or defenses. The arbitrator(s) will not consider unrelated evidence that does not support the contentions or new evidence a company does not list on the contentions sheet. The arbitrator will not consider evidence if it is not listed. This helps to guard against “surprise” evidence influencing the arbitrator(s).

Subparagraph (d) warns that the arbitrator will only consider the amounts listed in the Company Claim Amount, Contribution Sought Amount, and Legal Fees sections of the application. These entries are critical for the arbitrator to render an accurate award. There will not be an award if these entries are left blank. These amounts are the basis for the arbitrator’s(s’) award computation. The company claim amount, contribution sought amount and legal fees amount takes precedence over the damages amount if there is a conflict between the entries. For example, if the filing company lists its company claim amount as $2,000 but its itemization in the Damages section suggests its damages equal $20,000, the arbitrator’s award will be controlled by the company claim amount. So, if 100 percent liability is proven and all damages proven, only $2,000 will be awarded.

Rule 3-5, subparagraph (e) provides the requirements for having an arbitrator consider contested damages. A responding company may disagree with the filing company’s appraisal as to the amount of damages used to determine the company claim amount in the Auto Forum and can make the amount of damages an issue. To do so, the responding company must clearly outline the amount of damages in dispute in the Damages section (see also Rule 2-5). It is also strongly recommended that the responding company provide an itemization of its damages position, if possible, to ensure the most accurate award. If the responding company disputes a portion of the repair work done and/or the number of rental days, for example, it should argue this point and provide the dollar amount that it believes is warranted.
Chapter 31

Rule 3-6

Hearing Informality

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.

Rule 3-6 establishes that arbitration hearings are informal. The arbitrators do not adhere to strict rules of evidence, and there is no discovery process. The arbitrators accept any and all listed and submitted evidence, evaluate its applicability and credibility, and render a decision based on their assessment.

AF members have agreed to forego the rigid atmosphere of propriety and the time-consuming rules that govern a court proceeding, including rules of evidence, to achieve the advantages of expediency and cost-effectiveness. Rules of evidence are a series of rules created by the courts to ensure that any evidence presented in court is fair and reliable. These rules determine whether the court will admit and consider evidence. Since these rules are not applied in the arbitration hearing, companies may present their positions without concern about whether their evidence would be admissible in a formal court proceeding.

Further, the hearings are confidential. Recordings of any type, in any manner, are not allowed.
Chapter 32

Rule 3-7

Hearing Attendance

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 AF and all parties know of their appearance. 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.

Intercompany arbitration is designed to be an expeditious, easy, and cost-effective claims resolution process. For this reason, most arbitration cases are heard by file submission only. Rule 3-7, however, makes an allowance for party who wishes to personally appear before the arbitrator at the hearing and, if necessary, present witnesses.

If a representative (i.e., adjuster, attorney) wishes to attend a hearing, he/she must check the box that indicates “Appearance will be made by” and then select “Member Representative”. AF and all other parties must receive the application noting that an appearance will be made (see also Rule 2-1 and 2-2). Checking the appropriate box informs the other party(ies) and AF of the intention to appear. This gives the opposing party an opportunity to appropriately adjust its strategy and minimize any element of surprise.

A representative should not attend a hearing with the understanding he/she will verbally present his/her case. Rather, the arbitrator will review the submitted contentions and evidence prior to meeting with the representative. Once the arbitrator is familiar with the case and the issues in dispute, he/she will meet with the representative and ask any questions he/she may have in regard to the case. The representative will be dismissed once the arbitrator has all the information and/or clarification needed.

The same applies should an insured or a witness or expert also appear. His/her appearance should be noted on the application and, of extreme importance, his/her statement or report must be listed (under the Evidence section on the contentions sheet) and submitted. He/she may not attend to present verbal testimony. For this reason (and since a statement or report is as effective as a personal appearance), these types of appearances are very rare. To control claim costs, participants confine personal representation and witnesses to very complex cases where the arbitrator(s) benefits from their presence.
Rule 3-7 also provides that an insured or a witness or expert may not appear without the presence of a company representative. The purpose of this restriction is to minimize the potential for disruption at hearing.

A question that arises is - what constitutes a member representative? For the purposes of intercompany arbitration, the “member representative” is the person handling the claim on behalf of the member, i.e. an employee (adjuster, staff attorney) or an individual retained (third party administrator, outside attorney). Typically this is the individual who submits the filing or responds to it, and appears at the hearing to answer any questions the arbitrator(s) may have.
Arbitrator neutrality is critical to the success of any arbitration process. AF makes every effort to prevent an arbitrator from hearing a case that involves his or her company. If a case is inadvertently assigned to an arbitrator that involves the arbitrator’s company or represents any other potential personal interest, the arbitrator must immediately return the case to the AF hearing administrator. The administrator will reassign the case to a neutral arbitrator.

In addition, AF emphasizes that an arbitrator excuse himself/herself from hearing any case if he/she has a direct or indirect interest in the outcome (financial, business, personal, or professional). We also recommend that he/she excuse himself/herself from hearing a case that involves a prior employer, co-worker, or claim adversary if his/her decision could create an appearance of impropriety. The mere appearance of impropriety is reason enough for the arbitrator to return a file to the AF hearing officer for reassignment to another arbitrator.

AF supports and reinforces the importance of arbitrator neutrality and objectivity at the hearings and in workshops.
CHAPTER 34

Rule 3-9
Post-hearing Coverage Denial

Should a responding company fail to assert no coverage, a denial of coverage, or a policy limits defense before the hearing, it may do so 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.

Upon notifying AF post-hearing of the coverage denial or policy limits issue, the responding company will be assessed a charge equal to the filing fee.

The purpose of Rule 3-9 is to protect all participants. The rule allows a responding company that either did not respond or responded but failed to assert no coverage or a denial of coverage or policy limits to raise these defenses following the hearing. It also gives the filing company enough time to take other actions before the statute of limitations expires.

The Agreements’ Article Second says arbitration is not compulsory if an award will exceed a member’s policy limits or if there is a lack of coverage. Obviously, it is strongly recommended that a responding company raise these objections in its written answer to the filing as an affirmative defense. However, the responding company does not give up its right to raise an affirmative defense of no coverage or denial of coverage or policy limits so long as Rule 3-9’s time frames are met.

The first time limit in Rule 3-9 restricts the opportunity to raise a post-hearing coverage denial to within 60 days following the decision publication date.

The second time limit specified in Rule 3-9 is the filing company’s requirement to file at least 120 days before the statute of limitations expires. The 120-day period provides ample time for the responding company to raise any objections to jurisdiction. It also provides ample time for the filing company to take other action if the responding company’s answer has a valid objection.

The third time limit referred to in Rule 3-9 is a requirement for the responding company to answer with its written defense at least 60 days before the statute expires. This gives the filing company time to take other action to recover the damages. This 60-day requirement does not replace the responding company’s responsibility to answer a filing within
10 days before the hearing date (Rule 2-2). If the defense is not raised at least 60 days before the statute’s expiration and the filing company has filed 120 days before the statute runs, it forever surrenders its right to the defense.

Rule 3-9 further clarifies that if a denial of coverage or policy limits is raised after a hearing, the responding company must submit a copy of the denial of coverage letter to the party seeking coverage (see Rule 2-4) or proof of policy limits (i.e., copy of dec page; certificate of coverage letter).

When a responding company asserts no coverage or a denial of coverage or policy limits following the hearing, it will be assessed a fee equal to the respective forum’s filing fee. AF levies this assessment charge to discourage parties from waiting until after a hearing to raise an affirmative defense.
There are no default judgments in intercompany arbitration. In other words, the filing company does not prevail simply because no answer is submitted.

The filing company always has the burden of proof. It must establish its position, through its evidence, regarding negligence and damages to the satisfaction of the arbitration panel, even when there is no response.

In intercompany arbitration, the standard of proof used is “preponderance of evidence” (contrasted with "beyond a reasonable doubt," which is required in criminal proceedings). The preponderance is based on the more convincing evidence in regards to its probable truth or accuracy, and not simply the amount of evidence.

In the Uninsured Motorists Forum, since the sole issue is the validity of the responding company’s denial of coverage, the filing company must support its position that the denial was improper and/or why the member who issued the denial of coverage should reimburse the filing company’s UM settlement.

A frequently asked question is whether or not proof of payment is required. The distinction between proof of payment and proof of damages is important. Proof of payment is a must only when a respondent, through its answer, affirmatively challenges the existence of a subrogation claim. If not challenged, the presumption is the applicant has made payment to its insured and a subrogation claim exists. Such challenges should be rare, and the challenge should be substantiated. A challenge should not simply be raised because the applicant did not list proof of payment in its evidence listing. We don’t want to require the submission of unnecessary documentation.

If the applicant’s claim for subrogation is challenged, as part of its evidence the applicant must provide some form of proof that payment was made to its insured. For example, this could take the form of a copy of the check or draft issued to an insured in payment of the loss or a copy of the proof of loss executed by the insured on the claim.

While it is not a requirement to submit proof of payment to prove damages, we do recommend it be included in the evidence packet. Many arbitrators find it useful to verify if the filing company has listed its damage claim correctly (not including its deductible twice, deducted its salvage return). It is also of particular benefit when there are prior partial payments.
CHAPTER 36

Rule 4-2
Notice of Clerical or Jurisdictional Error

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.

While the members have agreed to accept all decisions as final and binding regarding issues of fact or law, Rule 4-2 provides guidelines for correcting a clerical or jurisdictional error made by AF staff or an arbitrator(s) following a decision. AF will void or amend an arbitration decision under very limited circumstances. The involved parties may bring these errors to AF’s attention or AF can take corrective action on its own without notice from the parties if it recognizes an error has been made. Upon confirmation of the error, AF will provide written notification to all parties and inform them of the action that will be taken.

Clerical errors are unintentional mistakes made by the AF staff or an arbitrator(s). For example, an arbitrator makes a mathematical error in calculating or entering an award or an AF file processor makes an incorrect data entry. AF can correct a clerical error if notified within 30 days of the decision’s publication date. The decision’s publication date is the date when AF transmits or mails the decision to all interested parties.

Jurisdictional errors occur when an arbitrator fails to rule on an affirmative defense, asserts an affirmative defense not plead 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. For example

- A party raises the affirmative defense that the statute of limitations expired and supports this defense with the appropriate evidence. The arbitrator does not recognize or acknowledge this defense in the decision and rules solely on the issues of liability and/or damages. The party that raised the defense can assert that the arbitrator committed a jurisdictional error by not addressing the affirmative defense, or objection to jurisdiction, in his/her decision.
- A responding company does not raise the affirmative defense that the statute of limitations expired even though the filing was filed “late.” The arbitrator notices the late filing date and closes the filing on his/her own. Since the affirmative defense was not asserted by a party, it is considered waived and the arbitrator’s decision would be considered a jurisdictional error. AF would void the decision and return the file to the arbitrator for a decision on the disputed issues.
- A responding company contests liability only; damages are not contested. The arbitrator, upon his/her review of the evidence, feels that the damages paid by the filing company were excessive or not related to the accident/loss and reduces the award. This would be a correctable error since the arbitrator did not have jurisdiction over damages since they were not contested.
- A responding company asserts and supports a denial of coverage (per Rule 2-4) but the arbitrator denies the affirmative defense. This would be a jurisdictional error (Article Second (d) of the Agreement) and AF would void the decision.
- A responding company asserts that it is not signatory to the forum in which a dispute is filed or that the matter was filed in the wrong forum, and the arbitrator upholds the affirmative defense/objection to jurisdiction. If it is determined that the responding was, in fact, signatory to the applicable forum or that the matter was filed in the correct forum, AF will void the decision and reschedule the case for a new hearing.

Clerical or jurisdictional errors are the only issues that can be brought to AF’s attention following a decision’s publication. AF recognizes that a member might be dissatisfied with a decision or award as it is a strong advocate for its position; however, the member has agreed to accept all decisions as being final and binding with no right to rehearing or appeal (except where allowed in Property and Special Forum). This includes perceived errors of fact or law.

AF continuously surveys the membership to get their feedback on decision-quality and uses this information to address any procedure or training issues. Any dissatisfaction with arbitration results should be communicated through this method.
AF will transmit or mail the decision to all interested parties.

A member who has filed or responded online via AF’s Web site will receive an immediate e-mail notification once a decision is posted. The representative can click on the link to the case that is embedded in the notice to see the decision and/or print a copy.
A member who has not filed or responded online (i.e., filed/responded via regular mail) will be mailed an electronic decision notice, not the original, signed decision sheet.

Additionally, decisions are posted and available on AF Web site (www.arbfile.org) within 7 days or less following the hearing.
The benefits of intercompany arbitration are not truly realized until the award has been paid and a claim file closed. To ensure the arbitration process remains expedited, a time limit was established for a party pay an award.

A member with an award rendered against it should promptly process the payment of it. The only exception is where it will assert that a clerical or jurisdictional error was made (see Rule 4-2) or file an appeal (see Rule 2-12). Otherwise, the responding member must comply with the arbitrator’s decision and award within 30 days of the publication date.

The parties shall honor all awards within thirty (30) days of decision publication date.
CHAPTER 39

Rule 5-2
Unpaid Award Follow-up Process

When a party 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 award payment.

(c) AF will notify the non-paying company and charge it a fee.

(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 interest and all costs incurred in pursuing collection until the award is paid.

Rule 5-1 establishes that an award must be paid with 30 days of the decision publication. Rule 5-2 outlines the process a member can take when an award is not paid.

If the prevailing party does not receive payment within 30 days after publication of the award, it must take the first step, which is to send a written request for payment to the delinquent company’s local senior claim representative. The prevailing party should use the claim manager’s name if possible or, at a minimum, address the request to the correct position. A party should also be able to prove delivery in the event a negative response or no response elevates the problem.

The prevailing party should take the next step if the award remains unpaid 30 days after the written request for payment, which is soliciting the help of AF to obtain the award. AF will contact the highest-level individual available at the delinquent company and inform the prevailing party of the action.

Thirty days after AF acts, the prevailing party is free to take the final step. The prevailing party may then sue the delinquent party to obtain the award (this is most often done under a breach of contract action). Rule 5-2 stipulates that the prevailing party may request the court also award statutory interest and all costs incurred in pursuing collection of the award (i.e., attorney fees, court costs, etc.).
CHAPTER 40

Rule 5-3
Award Obligations

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 within ten (10) business days in advance 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.

Rule 5-3 provides direction on the payment of an arbitration award. Simply, the responding company must send award payments, if any, directly to the filing company only. Intercompany arbitration resolves disputes between the member companies. These are the only parties at interest. As such, the award must be paid directly to the filing company and no other party.

In the interest of good will between the members, any payment that is made as a result of an arbitration decision must include any applicable deductible interest. The award will include the deductible interest in proportion to the liability assessment as a courtesy calculation for the members.

The second half of Rule 5-3 addresses supplemental damages. While it is strongly recommended that arbitration not be filed until a claim is concluded, AF realizes this may not always be possible. Therefore, in the Automobile and Property Forums, the applicant can file to recover supplemental damages paid 10 business days before the original hearing date or anytime after the hearing. The same applies in the Special programs for workers compensation subrogation claims. This 10-day timeframe coincides with the last day to submit documents for the hearing (Rules 2-1 and 2-2). If the supplemental payment is made prior to this 10-business-day window, the filing company needs to amend its filing to include these damages.

In the PIP and Medical Payments Forums, the members may desire an expedited resolution of a liability dispute. Because continuing, or ongoing, payments may be more common in these forums, Rule 5-3 allows an applicant to file arbitration to recover supplemental damages paid after the initial filing if the respondent contests these damages.

In all forums, the original liability decision is binding unto the parties. The sole issue for the arbitrator to consider in the new filing is the supplemental damages.
CHAPTER 41

Rule 6-1
Filing Fees

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 and Uninsured Motorists Arbitration, all parties incur the prescribed filing fee.

Rule 6-1 specifies that the filing company must pay the filing fee as well as a responding company that files a counterclaim. In the Special and Uninsured Motorists Forum, all parties must pay the respective filing fee, which varies depending on the contribution sought amount and whether or not a three-person panel is requested. There are no exceptions to a party’s obligation to pay the filing fee, even if a party files a case in error or withdraws its filing prior to hearing due to settlement of the claim.

The Agreement’s Article Fifth (d) grants AF the authority to establish fees on behalf of signatory companies. For most signatory companies, all filing fees are included in an invoice sent to each company (on a monthly billing cycle) for the total cases filed and/or deferred during the billing month.

The current fee schedule is available on AF’s Web site (www.arbfile.org).
CHAPTER 42

Rule 6-2
Photograph Return

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

Rule 6-2 notifies each party that AF destroys all file materials after the hearing unless a party notifies AF in a specific manner that it want its photographs or other original evidence to be returned. This rule only applies to materials in AF’s files and neither replaces nor changes a participating party’s file maintenance policy.

AF discourages the use of original documents if photocopies will suffice. If a party supports its contentions with original photos and wants AF to return the photos, it should be noted as an administrative request entry. The party also must provide a self-addressed, stamped envelope of sufficient size with the correct postage.