Writing Effective Contentions

Activity Booklet
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The purpose of this activity booklet is to provide you with the necessary tools to participate in Arbitration Forums’ *Writing Effective Contentions* Workshop and to provide you with information you can refer to as you prepare cases for arbitration.

**Format – Writing Effective Contentions**

Help the arbitrator(s) follow your ideas and remember important points from your cases by writing your contentions in a logical format, directing the arbitrator(s) to the specific location of your evidence.

Knowing the main points of your case and presenting them in a consistent manner is crucial. By using a consistent format, you help the arbitrator easily identify and attain information that supports him/her in making a sound decision.

Ensure your contentions:
- State clearly what is at issue.
- Address all the key points.
- State the outcome sought.

**Writing Format – Three Main Sections**

1. **Introductory statement**—states the nature of the dispute and your liability/damages position.

   **Automobile Example:** This dispute involves an auto accident at a 4-way stop intersection. Applicant’s west bound vehicle was struck broadside by Respondent’s north bound vehicle when it failed to yield the right of way.

   **Property Example:** This dispute arises from a fire loss that damaged the interior of a condominium owned by Applicant’s insured. The fire originated in a dryer that Respondent’s insured (who is the neighbor of the Applicant) owned and negligently maintained, specifically by failing to clean out the lint trap. Applicant seeks recovery of $14,781.65 in damages, including their insured’s deductible.

2. **Body** of contentions should include:
   - *Background information* – Describes the scene or what happened between the parties.
   - *Evidence* to support your investigation.

   **Automobile Example:** This accident occurred on May 1, 2003 at approximately 5:00p on Broadway and First Ave. in San Diego, Ca. Broadway runs east/west and is one lane each direction. First Ave. runs north/south and is one lane each direction. The roads were clear and dry and traffic was moderate to heavy. This intersection is controlled by 4-way stop signs. The Applicant’s insured was travelling westbound on Broadway approaching the intersection with First Ave. The Respondent was northbound on First Ave. The Applicant’s insured stopped at the stop sign, looked in both directions and then proceeded into the intersection. The
Applicant’s insured contents that the Respondent’s insured did not stop at the stop sign before entering the intersection. The front of the Applicant’s vehicle was crossing the center line of First Ave. when it was struck broadside in the driver’s door by the Respondent’s insured (see exhibit 1, Applicant driver’s r/s). From the point of impact (see exhibit 2, photos of Applicant vehicle) and the extent of the damage (see exhibit 3, estimate of damages), the Respondent’s vehicle could not have stopped at his stop sign before proceeding into the intersection. There were no other known witnesses and the police did not come to the scene.

Property Example: The Applicant and Respondent are neighbors in a condominium building. The fire started on 2/14/05 in the lint compartment of the Respondent insured’s dryer and spread to the Applicant insured’s adjacent property. The attached Fire Marshall’s report (Exhibit 1) concludes that the fire originated in the Respondent insured’s condominium, in the clothes dryer likely as a result of lint build up and confirms the path of the fire from Respondent property to the Applicant’s. The recorded statement of witness Nancy Clausen (Exhibit 2), another neighbor who first discovered the fire and called the fire department, confirms that she noticed the fire at about 2:30 PM through a basement window in the Respondent insured’s condominium. This window is near the shared wall between the Applicant’s and Respondent’s property. She also indicated that the Applicant’s insured was not at home when the fire stated, though the Respondent insured was. The recorded statement of the Respondent’s insured (Exhibit 3) indicates that the dryer is about 20 years old and had not been serviced in some time. It was in proper working order to the best of her knowledge though it did not dry clothes as quickly as it had when it was newer. The owner’s manual for the dryer (Exhibit 4 – page 3) clearly warns that the lint trap and hose must be cleaned out regularly to prevent potential fire hazard and to assure continuing performance of the dryer. Scene photos (Exhibit 4) detail the fire and smoke damage done to the interior of the building and the shared wall through which the fire spread to the Applicant insured’s property. The estimate of repairs (Exhibit 5) confirms the extent of the damage to the Applicant’s property and costs paid to repair it.

After 20 years of use, the Respondent’s insured knew or should have known that lint could build up over time and that the lint trap and hose should be cleaned out as part of regular maintenance. The need for this kind of maintenance is specifically stated in the owner’s manual to prevent the fire hazard that in fact occurred. Event the reduced drying performance was possible an indication of a blockage caused by lint build up, alerting the Respondent’s insured to the problem.

3. A closing statement—Reaffirms liability/damages position and amount of award sought. State exactly what you are seeking; don’t make the arbitrator guess.

Auto Example: Respondent driver’s failure to yield at the stop sign before entering the intersection was the sole and proximate cause for the accident and resulting damage. Therefore, Applicant asks the panel for 100% of their damages in the amount of $5,000.00 including the deductible.

Property Example: The Respondent insured was on actual or constructive notice of a lint build up, and knew or should have know that routine maintenance would have prevented such a build up. The Respondent also had a duty to prevent the risk of damage to the property. For all of these reasons, the Applicant should be awarded 100% of the damage caused by the Respondent insured’s negligence. Therefore, the Applicant asks the panel for 100% of their damages in the amount of $14,681.65 including the deductible.

Note: State again that the other party is at fault and mention comparative negligence (including percentages) if it applies. Always include a theory of liability and support the right of recovery, especially if there is a specific statute or state law supporting this right. Be realistic to increase credibility.

If there is a theory, like strict liability, for why you should recover 100%, this is where you would put it.
Activity – Recognition

Purpose: To learn the significance of the words one chooses when presenting an arbitration case.
Directions: Read the contentions below and be prepared to answer the questions listed below.

The Contentions

Auto Example: This loss occurred on 12/15/01 in Yonkers, NY at approximately 5:30 p.m. on Central Park Ave. Central Park has at least two lanes this direction. There were no known traffic controls involved. Weather was not a factor in this loss.

Applicant’s (ABC Company) insured was stopped on Central in traffic when struck by Respondent’s (XYZ S. Smith), while merging. ABC’s insured maintains in written statement to having been stopped properly in lane at time of accident, see evidence for more information.

XYZ insured’s front bumper struck ABC insured’s vehicle. XYZ’s insured had the last chance to avoid the loss, as the striking vehicle. ABC’s insured was stopped and unable to take evasive action. The accident also occurred past ABC’s insured line of vision. No police report was written. XYZ’s insured is the sole and proximate cause of this loss for improper lane change. XYZ’s insured failed to observe the established ABC’s insured vehicle. ABC’s insured was fully established and there to be seen when struck by the merging XYZ’s insured. XYZ’s insured contributed with improper lookout. ABC’s insured did nothing to contribute to this loss.

Property Example: The Applicant’s insured suffered water damage from a leak that originated in the apartment directly above the one owned by the Respondent’s insured. Estimates show the extent of damage and cost of repairs. Appropriate maintenance by the Respondent’s insured would have prevented the loss. The Applicant requests full reimbursement for their damages.

• What can you tell about this situation from these contentions?

• What is the Applicant seeking?
Importance of Evidence

Contentions provide a framework for your case, but evidence provides the foundation of your arguments. Without evidence to support them, contentions are no more than opinions. For a contention to become fact in an arbitration case, it must be supported by a piece of evidence. The only way to prove your contentions (to create facts for the arbitrator) is with evidence. Also the same piece of evidence may be valuable to support different statements in the contentions.

Property cases tend to be more complex than the typical auto case, so we will review one example of an auto case and two examples of property cases, looking at the types of evidence that would be required to prove contentions in these cases.

1. Auto accident involving a left turning vehicle being struck by a vehicle going through an intersection, resulting in injury to passenger.

   - Drivers’ statements (could be directly conflicting but could reveal important information regarding liability)
   - Police report to verify participating parties, citations given, posted speed limits and intersection controls, diagrams of scene, descriptions from parties, identity of witnesses, existence of skid marks.
   - Statement from passenger for accident from his perspective.
   - Other evidence to “break the tie” if two drivers’ statements conflict – unbiased witness statements.
   - Reconstruction or other specialist to support/refute allegation of speed.
   - Estimates of damage or other proofs of damages sustained and paid.
   - Photographs of vehicles showing points of impact, angles of impact and severity of impact.
   - Diagram of scene and accident.

2. Applicant’s roof is damaged by tree owned by Respondent.

   Examples of evidence:

   - Photos of downed tree and damage.
   - Opinion of tree special as to condition of tree and cause of event.
   - Weather report for day of event
   - Statements of Applicant insured and witnesses as to condition of tree before and notice to Respondent insured about condition.
   - Repair bills.
3. Soot damage in Applicant’s building caused by malfunction of heating system manufactured by Respondent 1 and installed by Respondent 2.
   • Purchase documents including warranty and owner’s manual.
   • Installation invoice.
   • Maintenance records.
   • Expert report after inspection and/or testing as to cause of event.
   • Statements from Applicant’s insured or witnesses about history of heating system, installation and previous problems and event at issue.
   • Photos of pertinent parts and damages.
   • Estimates, repair bills.
Evidence Linking

- Ensure that your contentions are supported by your evidence.
- Link or reference a statement you make in your contentions to a specific piece of evidence.

The following are examples of how to reference your evidence to your contentions:

- The fire started by a faulty wire in the water heater. (See exhibit #2, page 2 marked Fire Report).
- The Applicant asks the committee, after reviewing the evidence submitted, to rule in its favor, allow for full recovery, and award the balance of $2,000.00 (See exhibit #4, Estimate). Respondent carrier has paid only $500.00. (See exhibit #5, partial payment by Respondent Carrier).

By using linking techniques such as parentheses and definitive wording, you will guide the arbitrator to the specific pieces of evidence needed to support your case.

NOTE: Sometimes not all pieces of evidence are significant to your case. In this situation, you need not include them in your contentions. Be certain to include only pertinent evidence.

In addition to linking your evidence to your contentions, remember these tips:

- List your evidence in the order it is referenced. Use your evidence list as a guide to ensure you have addressed and included all of your support referenced in your contentions.
- Use tabs to separate your evidence. This makes it easy for the arbitrator to locate a specific item quickly and easily.
- Highlight sections/portions of the evidence to which you would like to draw the arbitrator’s attention.
Activity – Linking Evidence

**Purpose:** To help you recognize opportunities to link your evidence to your contentions.

**Directions:** Read the contentions below and be prepared to answer the questions.

**Auto Example:**

**Respondent Evidence**

1. Police report
2. Photos of the accident scene
3. Photos of Applicant’s and Respondent’s vehicles
4. Diagram of accident scene
5. Highlighted witness statement

**Respondent Contentions**

This accident occurred on Cactus and Peoria in Phoenix, AZ. Cactus is one lane in each direction. Peoria is one lane in each direction.

The Respondent (XYZ Insurance) was trying to make a right turn. The Applicant (ABC Insurance) was trying to make a right turn. They both collided causing damage to their vehicles.

According to the witness, Ms, Fact, ABC’s insured did not have his right signal on to indicate his intent to turn right. The police was called to the scene but no citations were issued.

XYZ Insurance contends that ABC’s insured is at fault for this accident.

**Property Example:**

**Applicant Evidence**

1. Inspection Report
2. Denial Letter
3. Drafts and Estimates

**Applicant Contentions**

On February 28, 2001 the Applicant sustained water damage to the home due to the water heater that leaked and caused water damage to their property. The unit is identified as model: 71-305 serial: Z-47, and is being stored by X Investigations. The age of the heater is 6 to 7 years old. The life expectancy is 14 years. Our expert tested
the water heater and found that a pinhole in the lining of the water tank was present at manufacture. The anode rod was no longer working. The Applicant’s water damage includes flooring, drywall, and additional living expenses while out of the home. The total damage is $15,000.00 The Respondent has denied the Applicant’s claim.

Questions:

- How would I create the links between the contentions and evidence in this example?
  
  ___________________________________________________
  ___________________________________________________
  ___________________________________________________
  ___________________________________________________

- Was there evidence I didn’t include in these contentions?
  
  ___________________________________________________

- Were there any allegations not supported by evidence?
  
  ___________________________________________________
Suggested Response

Auto Example:

Respondent Evidence

1. Photos of the accident scene
2. Highlighted witness statement
3. Photos of Applicant’s and Respondent’s vehicles
4. Police report

Respondent Contentions

This dispute involves a MVA that resulted in damage of $2,500 to the left front of the Respondent’s vehicle. The accident was caused primarily by the negligence of the Applicant’s insured, specifically her failure to signal her intention of turning right at the intersection thus causing the Respondent vehicle to strike the Applicant vehicle on its right rear and quarter panel.

This accident occurred on Cactus at the intersection of Peoria in Phoenix, AZ at 10:30 am. Cactus runs east/west with one lane in each direction. Peoria runs north/south with one lane in each direction. (See exhibit #1, photos of accident scene). The weather was clear and dry, and traffic was light.

The Respondent’s insured was traveling westbound on Cactus. The Applicant’s insured was also travelling westbound on Cactus directly in front of the Respondent’s insured. Both vehicles were stopped at a red light at the intersection of Peoria. The Respondent’s insured intended to turn right at the intersection. Because the Applicant vehicle had no turn indicator activated, the Respondent insured reasonably assumed that the Applicant driver intended to go straight through the intersection when the light changed to green. The Respondent insured therefore pulled to the right of the Applicant’s vehicle so that she could make her right turn when the traffic cleared on Peoria.

As the Respondent’s vehicle was pulling to the right of the Applicant’s vehicle, the Applicant driver, suddenly, and with no signal of any kind, began making a right turn in front of the Respondent’s vehicle, causing a collision between the left front bumper of the Respondent vehicle and the right rear and quarter panel of the Applicant vehicle (see Exhibit 2 and 3, photos of Applicant and Respondent vehicle damage). The Respondent contends that the lane was clearly wide enough for both vehicles side by side. The Respondent driver was justified in attempting to pull to the right of the Applicant vehicle that was stopped (see Exhibit 1, photos of accident scene).

Witness, Ms. Fact, was eastbound on Cactus and also stopped at the red light. She confirms that the Applicant vehicle had no turn indicator activated (see Exhibit 4, witness r/s, highlighted passage on page 3). The police
came to the scene, but no citations were issued because the witness had left the scene prior to the police officer arriving (see Exhibit 5, police report).

The Applicant’s insured was the proximate cause for this accident for failing to signal his intent to turn right. The Respondent, therefore, asks the panel to refuse Applicant’s request for their damage and instead to award the Respondent 100% of the $2,500 damage to its insured vehicle. However, if the panel believes that the Respondent contributed to the accident, the Respondent asks that no less than 80% be awarded.

**Note:** If you believe that the arbitrator should apply comparative negligence then you should tell them that. If you ask for 100% and the arbitrator does not feel that the Respondent was 100% at fault, then you MIGHT get nothing. If you expect that comparative negligence should be considered, you must let the arbitrator know. You should usually ask for a bit more than you would actually accept because the arbitrator can not award more than you ask for. However, recognizing that comparative negligence should be applied is a good reminder that the award does not have to be all or nothing.

**Property Example:**

**Applicant Evidence**

1. Notice of Claim to Respondent
2. Inspection Report
3. Drafts and Estimates
4. Denial letter from Respondent
5. Life expectancy chart of showing the life expectancy of a water heater.
6. Warranty and Strict Liability Law

**Applicant Evidence**

The Applicant (ABC Insurance) and the Respondent (XYZ Insurance) are in a dispute over water damage. The Applicant feels the Respondent is 100% negligent. The Applicant’s damages are $5,599.41, which includes the deductible of $500.00.

This dispute involves water damage sustained by the Applicant as a result of a failure of the water heater manufactured by ABC Company insured by the Respondent. The failure was caused by a product defect, a pin hole in the lining of the water tank that was present at the time of manufacture. The pinhole eventually allowed corrosion to undermine the tank wall causing a slow leak of water to escape from the tank, damaging the flooring and drywall in the Applicant’s family room.

On February 28th, 2001 the Applicant discovered water damage to their home caused by a water heater that leaked from the tank in the utility room and spread to the adjacent family room. The unit is identified as model: 71-305 serial: Z-47, and is being stored by X Investigations. The age of electric water heater is 6-7 years old, and the life expectancy is 14 years. (See exhibit #5 – Life Expectancy Chart).
Our independent expert, PDQ Engineering, examined and tested the water heater and found a pinhole in the lining of the water tank interior that represents a manufacturing defect. Our expert tested the water heater, and found that a pinhole in the lining of the water tank was present at the time of manufacture. The anode rod was depleted and no longer worked as a corrosion prevention device. (The anode rod is designed to deplete slowly while protecting a the glass-lined tank from corrosion and prolonging the life of the water heater. Once the anode is depleted, the tank will start to corrode, eventually developing a leak. According to the manufacturer’s instructions, the anode rod should be removed for inspection every three years. If the rod is more than 50% depleted, it should be replaced.)

Over time this pinhole allowed corrosion to progress through the tank wall. (See exhibit #2 – Inspection Report which verifies the pinhole was found). There was no evidence that installation or maintenance contributed to this failure.

The scope of the Applicant’s water damage includes flooring, drywall, mitigation, and additional living expenses while the Applicant’s insured was unable to live in the house during mitigation.

The Applicant contends that strict liability and breach of warranty can be imputed to the Respondent. Strict product liability holds that when a manufacturer places a product into stream of commerce which it knows is to be used without inspection for defects, and the product proves to be defective and the defect causes personal property damages when used for its intended use, the manufacturer can be held strictly liable and not subject to consideration of contributory or comparative negligence of the user. (See exhibit #6 Warranty and Strict Liability Law). In the present case, the water heater was manufactured and placed into the stream of commerce by the Respondent. It is unrealistic to expect the Applicant consumer have inspected the unit for defects prior to use. However, the unit did fail and caused damages.

The Applicant experienced no prior problems or malfunctions with the water heater before the loss. It had not been modified after it was put into use. Therefore the liability is attached to the Respondent manufacturer.

The Respondent is strictly liable for manufacturing a defective water heater and owes 100% of the damages resulting from that defect. The Applicant’s claim is for $5,5599.41, which includes the deductible of $500.00 (See exhibit #3 – Drafts and Estimates).
Activity – Evaluating Contentions/Automobile

**Purpose:** To help you understand the difference between well written and poorly written Contentions, and what a difference this can make in how arbitrators make decisions.

**Directions:** Read the contentions for both the applicant and respondent and be prepared to discuss your decision. This activity will take approximately 15 minutes.
ARBITRATION FORUMS, INC.  
Contentions Sheet  
(Required per Rules)

File provided by: (check one) ☒ Applicant or ☐ Respondent #  
Special/ Uninsured Motorists’ ☐ Company #1 or ☒ Company #  

(Identify yourself below)  
Company Name: Always Wins Insurance  
Insured: Winnie Winner  
File #: AB 35 6 0993

AFFIRMATIVE DEFENSES/PLEADINGS:  

DEFERMENT JUSTIFICATION:  

CONTENTIONS:  
This dispute involves a two-car intersection accident in which the Respondent driver failed to yield the right of way making a left turn, causing a collision with the Applicant vehicle which was proceeding straight through the intersection is a two-car auto accident in which liability is disputed. The Applicant feels the Respondent is 100% at fault.

Location:  
This accident occurred on March 21, 2000 at approximately 2:15 pm at the intersection of Cross Street and Main in Miami, FL. Cross Street has one lane each way; east and west, along with (a left) turn lane. Main has two lanes each direction; north and south with (a left) turn lane at the intersection. The intersection is governed by traffic lights. The weather on the day of the accident was clear.

Facts of the Loss:  
The Applicant (Always Wins Insurance) was travelling East on Cross Street (see Item #1 – Applicant’s Recorded Statement, page 4). The Respondent, (Mostly Wins Insurance) was travelling West on Cross Street in the left turn lane (see Item#6 – Scene Diagram). The traffic light was green for both east and west traffic.

Mostly Wins’ insured was attempting to make a left turn on a green light directly into the path of Always Wins’ insured. Always Wins’ insured immediately observed Mostly Wins’ insured stat to turn 50 feet from the intersection. She blew the horn on her vehicle and swerved to the left to avoid the accident, but was unable to avoid hitting Mostly Wins’ insured on the passenger side rear quarter panel. Always Wins’ insured’s damage
was on the right front bumper (see Item #6 – Applicant Vehicle Photos and Item #7 – Respondent Vehicle Photos). The investigating officer conducted a scene investigation (see Item #4 – Police Report). Based on the physical evidence at the site and scene testimony, Mostly Wins’ insured was charged with failure to yield the Right-of-Way. An independent witness (David Appleton) was travelling behind Mostly Wins’ insured driver, and verified Always Wins’ insured’s version of the accident (see Item #3 – Witness Recorded Statement). There were no charges or contributing factors noted towards Always Wins’ insured.

**Liability Assessment:**
It is the Applicant’s, Always Wins Insurance, position that the Respondent, (Mostly Wins Insurance) is 100% negligent for making a left turn in front of oncoming traffic. The Applicant took all possible and reasonable evasive action and is not negligent; therefore the Applicant seeks 100% recovery of its damages of $4,005 (see Item #8 – Estimate of Damages).

**EVIDENCE:**
List evidence which will support contentions stated above (i.e., police report, damages, estimates, statements). Photocopies of evidence are suggested. Photos will not be returned without a sufficient size self-addressed envelope with adequate postage. **Note this request in the Administrative Request section below.**

1. Applicant Driver Statement (Winne Winner)
2. Respondent Driver Statement (George Runnerup)
3. Witness Statement (David Appleton)
4. Police Report
5. Scene Diagram
6. Photos of Applicant Vehicle
7. Photos of Respondent Vehicle
8. Estimate of Damages for Applicant Vehicle

**DAMAGES:**
Filing company: itemize payments made to support your claim amount. Responding company: Present your damages argument(s) and outline the amount of damages in dispute. If left blank, damages will not be considered at issue (Rule 2-5).

- Estimate: $4,505.00
- Deductible: -500.00
- Company Claim: $4005.00

**Administrative Requests:**
ARBITRATION FORUMS, INC.
Contentions Sheet
(Required per Rules)

File provided by:(check one) ☒ Applicant or ☐ Respondent #
Special/ Uninsured Motorists’ ☐ Company #1or ☒ Company #
(Identify yourself below)

Company Name: Always Wins Insurance
Insured: Winne Winner
File #: AB 35 6 0993

AFFIRMATIVE DEFENSES/PLEADINGS:

DEFERMENT JUSTIFICATION:

CONTENTIONS:
Facts of the Loss:
The Applicant was travelling on Cross Street. The Respondent has a green light and attempted a left turn from Cross Street. The Applicant attempted to avoid the accident, however, a collision occurred and our insured sustained damage to the right front of her vehicle. There was a police investigation and there was a witness to this accident.

The Applicant prays for 100% recovery.

EVIDENCE:
List evidence which will support contentions stated above (i.e., police report, damages, estimates, statements). Photocopies of evidence are suggested. Photos will not be returned without a sufficient size self-addressed envelope with adequate postage. Note this request in the Administrative Request section below.

1. Statements
2. Police Report
3. Damages
4. Vehicle Code
5. Diagram
6. Photos

DAMAGES:

Filing company: itemize payments made to support your claim amount. Responding company: Present your damages argument(s) and outline the amount of damages in dispute. If left blank, damages will not be considered at issue (Rule 2-5).

- **Estimate:** $4,505.00
- **Deductible:** -$500.00
- **Company Claim:** $4005.00

Administrative Requests:
Contentions Sheet

File provided by: (check one) □ Applicant or □ Respondent #
Special/Uninsured Motorists’ □ Company #1 or □ Company #
(Identify yourself below)

Company Name: Mostly Wins Insurance Company
Insured: George Runnerup File #: 83 90125

AFFIRMATIVE DEFENSES/PLEADINGS:

DEFERMENT JUSTIFICATION:

CONTENTIONS:

Location:
This accident occurred on March 21, 2000 at approximately 2:15 pm at the intersection of Cross Street and Main in Miami, FL. Cross Street has one lane each way, east and west, along with a left turn lane. Main has two lanes each direction, north and south, with a left turn lane at the intersection. The intersection is governed by traffic lights. The weather on the day of the accident was clear.

Facts of the Loss:
The Applicant’s insured (Always Wins Insurance) was travelling East on Cross Street. The Respondent (Mostly Wins Insurance) was travelling West on Cross Street in the left turn lane with his left signal on.

Mostly Wins’ insured approached the traffic signal and commenced a turn onto Main Street on a green light. Mostly Wins Insured contents that the Always Wins’ insured was speeding and didn’t brake or swerve to try and avoid the collision. Always Wins’ insured struck the Mostly Wins on the right rear quarter-panel (see Item #5 – Mostly Wins Vehicle Photo).

Liability Assessment:
The Respondent, Mostly Wins Insurance, asserts that as its insured’s vehicle’s point of impact was the right rear side of the car (see Item #5 – Mostly Wins Vehicle Photos of Damage), the Always Wins’ insured was at a minimum 25% at fault toward the accident for not taking evasive action by braking or swerving to avoid the
collision. There is no evidence that Mostly Wins is completely responsible or acting negligently toward Always Wins’ insured. We ask for an appropriate Award based on the Pure Comparative statutes of this state.

EVIDENCE:

List evidence which will support contentions stated above (i.e., police report, damages, estimates, statements). Photocopies of evidence are suggested. Photos will not be returned without a sufficient size self-addressed envelope with adequate postage. Note this request in the Administrative Request section below.

1. Applicant Driver Statement (Winnie Winner)
2. Respondent Driver Statement (George Runnerup)
3. Scene Diagram
4. Photos of Applicant Vehicle
5. Photos of Respondent Vehicle

DAMAGES:

Filing company: itemize payments made to support your claim amount. Responding company: Present your damages argument(s) and outline the amount of damages in dispute. If left blank, damages will not be considered at issue (Rule 2-5).

Administrative Requests:
DOCKET NO.: A100-02001-05-00

APPLICANT

Company: Always Wins Insurance Co.
Insured: Winnie Winner
File: # AB35 6 0993

RESPONDENT

Company: Mostly Wins Insurance
Insured: George Runnerup
File: # 83 90125

As a committee member with Arbitration Forums, you have been given the above referenced matter to hear and will render an Award based on the respective parties’ Contentions.

APPLICANT ________________________________________________________________

RESPONDENT ______________________________________________________________

Company Claim Amount __________ Insured Deductible Int. __________

Award Against __________ Deductible __________ Total Award __________

Notes:
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
**Activity – Evaluating Contentions/Property**

**Purpose:** To help you understand the difference between well written and poorly written Contentions, and what a difference this can make in how arbitrators make decisions.

**Directions:** Read the contentions for both the applicant and respondent and be prepared to discuss your decision. This activity will take approximately 15 minutes.
ARBITRATION FORUMS, INC.
Contentions Sheet

(Required per Rules)

File provided by: (check one) ☒ Applicant or ☐ Respondent #
Special/ Uninsured Motorists’ ☐ Company #1 or ☒ Company #

(Identify yourself below)

Company Name:  ABC Insurance
Insured:  Winnie Winner  File #:  AB3560993

AFFIRMATIVE DEFENSES/PLEADINGS:

deferment justification:

contentions:
This dispute arises from a motor vehicle accident that resulted in damage to the fence insured by the Applicant, ABC Insurance. The Respondent’s insured lost control of his car as a result of intoxication and driving too fast for conditions. The vehicle left the street and through applicant’s fence.

The accident occurred on March 2nd, 2000 at approximately 10:30 pm at the corner of Kettner Blvd and Date St. in San Diego, California. The weather conditions were rainy and the roads were wet. The traffic was light. Kettner is a one-way street that has two lanes heading east. The Applicant’s home is on the southwest corner of the intersection and has a chain link fence surrounding the yard. The Respondent was in the right lane on Kettner Blvd. (See exhibit #5 Scene Photos). The Applicant’s home is on the southeast corner of the intersection and has a chain link fence surrounding the yard.

The Applicant contends that its insureds awoke to squeaking tires and then a loud crash. The insureds got out of bed and looked out the window to see their chain link fence torn down and a vehicle sitting in their yard. The Applicant quickly called the police and then went outside to help the driver of the Respondent vehicle (See exhibit #1 Applicant r/s, pages 3-7). After speaking to the Respondent driver the Applicant noted the smell of alcohol.

The Respondent contends that its insured was driving in the right lane on Kettner Blvd. when a phantom vehicle came from the left lane and attempted to change lanes into his lane. He attempted to swerve to avoid the phantom vehicle but due to weather conditions, lost control and hit the Applicant’s fence (see exhibit #2 – Respondent r/s, pages 4-10). The police did come to the scene and the Respondent was cited for Ca. statute 13-
404: Failure to control vehicle and for driving impaired. There were no direct witnesses to the accident and no evidence of another vehicle at the scene (see exhibit #3 Police Report, page 3 – Respondent citation).

The Applicant has damages in the amount of $3,500.00 for fence repair, which includes the deductible of $500.00 (see exhibit #4 – Estimates and Photos of damage).

The Applicant’s insured in no way contributed to his own damage and there is no evidence that any other vehicle or driver contributed to the accident. The Applicant feels the Respondent is 100% negligent for failing to maintain control of vehicle and for driving while impaired. The Applicant asks the arbitration panel to rule in their favor.

EVIDENCE:

List evidence which will support contentions stated above (i.e., police report, damages, estimates, statements). Photocopies of evidence are suggested. Photos will not be returned without a sufficient size self-addressed envelope with adequate postage. Note this request in the Administrative Request section below.

1. Applicant Recorded Statement
2. Respondent Recorded Statement
3. Police Report w/citations
4. Estimates and photo’s of Applicant fence damage
5. Scene Photos of Applicant’s Home and the intersection

DAMAGES:

Filing company: itemize payments made to support your claim amount. Responding company: Present your damages argument(s) and outline the amount of damages in dispute. If left blank, damages will not be considered at issue (Rule 2-5).

<table>
<thead>
<tr>
<th>Estimate</th>
<th>$3,000.00</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deductible</td>
<td>$500.00</td>
</tr>
<tr>
<td>Total Claim</td>
<td>$3,500.00</td>
</tr>
</tbody>
</table>

Administrative Requests:
Contentions Sheet

File provided by: (check one) ☒ Applicant or ☐ Respondent #

Special/ Uninsured Motorists’ ☐ Company #1 or ☒ Company #

(Identify yourself below)

Company Name: ABC Insurance

Insured: Winnie Winner File #: AB35 6 0993

AFFIRMATIVE DEFENSES/PLEADINGS:

DEFERMENT JUSTIFICATION:

CONTENTIONS:

This dispute arises from a motor vehicle accident that crashed into the Applicant’s fence.

The accident occurred on March 2nd, 2000 at approximately 10:30 pm at the corner of Kettner BLVD and Date St in San Diego. The Respondent was on Kettner Blvd.

The Applicant contends that its insured awoke to the squeaking tires and then a loud crash. The insureds got out of bed and looked out the window to see their chain link fence torn down and a vehicle sitting in their yard. After speaking to the Respondent driver the Applicant noticed the smell of alcohol.

The Respondent contends that a phantom vehicle came from the left lane and attempted to change lanes into his lane. He attempted to swerve to avoid the phantom vehicle but lost control and hit the Applicant’s fence (see exhibit #2 – Respondent r/s, pages 4-10). The police did come to the scene and the Respondent was cited for Failure to control vehicle and for driving impaired.

The Applicant has damages in the amount of $3,500.00 for fence repair, which includes the deductible of $500.00 (see exhibit #4 – Estimates and Photos of damage).

The Applicant asks the arbitration panel to rule in their favor.

EVIDENCE:
List evidence which will support contentions stated above (i.e., police report, damages, estimates, statements). Photocopies of evidence are suggested. Photos will not be returned without a sufficient size self-addressed envelope with adequate postage. **Note this request in the Administrative Request section below.**

1. Applicant Recorded Statement
2. Respondent Recorded Statement
3. Police Report w/citations
4. Estimates and photo’s of Applicant fence damage
5. Scene Photos of Applicant’s Home and intersection

**DAMAGES:**

*Filing company: itemize payments made to support your claim amount. Responding company: Present your damages argument(s) and outline the amount of damages in dispute. If left blank, damages will not be considered at issue (Rule 2-5).*

- **Estimate:** $3,000.00
- **Deductible:** $ 500.00
- **Total Claim:** $3,500.00

**Administrative Requests:**
Contentions Sheet
(Required per Rules)

File provided by: (check one) □ Applicant or □ Respondent #

Special/ Uninsured Motorists’ □ Company #1 or □ Company #

(Identify yourself below)

Company Name: MOSTLY WINS INSURANCE COMPANY

Insured: George Runnerup File #: 83 90125

AFFIRMATIVE DEFENSES/PLEADINGS:

DEFERMENT JUSTIFICATION:

CONTENTIONS:

This accident occurred on March 2, 2000 at approximately 10:30 pm. It was dark outside and headlights were required. The accident happened at the corner of Date St. and Kettner Blvd. in San Diego California. Kettner BLVD. is a one-way street that has two lanes that head east. Kettner Blvd. DOES NOT have good street lighting. It was raining outside and the roads were wet. The posted speed limit is 30mph (see exhibit #2 – scene photos).

The Respondent insured was driving in the right lane on Kettner Blvd. at approximately 25mph with their headlights on. The Respondent states that a phantom vehicle that was driving in the left lane started to change lanes into the Respondent’s lane without signaling. The Respondent attempted to take evasion action and swerved to the right. Due to the weather conditions and lighting of the street the Respondent lost control and hit the Applicant’s fence. The Phantom vehicle left the scene without stopping (see exhibit #1 Respondent r/s).

The Applicant is contending that the Respondent was drunk at the time of the accident. The citation was dismissed in court for lack of evidence because a field sobriety test was not properly conducted (see exhibit #3 Dismissal of citation for driving impaired).

The police were called to the scene for assistance. No witnesses were present at the time. The Respondent’s vehicle has damage to the front bumper, hood and grill. The Respondent has liability coverage only. The Respondent’s vehicle was drivable from the scene (see exhibit #3 Police Report).
The Respondent feels they have a minimal amount of liability for the Applicant’s damages. The phantom vehicle caused the accident by making an unsafe lane change and improper signaling and should be the majority at fault for the Applicant’s damages (see exhibit #4 Rule of the Road for changing lanes).

The Respondent prays for favorable decision.

EVIDENCE:
List evidence which will support contentions stated above (i.e., police report, damages, estimates, statements). Photocopies of evidence are suggested. Photos will not be returned without a sufficient size self-addressed envelope with adequate postage. Note this request in the Administrative Request section below.

1. Respondent Recorded Statement
2. Scene Photos
3. Citation dismissal
4. Rules of the Road for Changes lanes

DAMAGES:
Filing company: itemize payments made to support your claim amount. Responding company: Present your damages argument(s) and outline the amount of damages in dispute. If left blank, damages will not be considered at issue (Rule 2-5).

Administrative Requests:
DOCKET NO.: A100-02001-05-00

APPLICANT

Company: Always Wins Insurance Co.
Insured: Winnie Winner
File: # AB35 6 0993

RESPONDENT

Company: Mostly Wins Insurance
Insured: George Runnerup
File: # 83 90125

As a committee member with Arbitration Forums, you have been given the above referenced matter to hear and will render an Award based on the respective parties’ Contentions.

APPLICANT ________________________________________________________________

RESPONDENT ________________________________________________________________

Company Claim Amount __________________ Insured Deductible Int. ___________________

Award Against ______________ Deductible _______________ Total Award _______________

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Notes:

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__________________________________________________________________________________________
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__________________________________________________________________________________________
__________________________________________________________________________________________
__________________________________________________________________________________________
__________________________________________________________________________________________

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Checklist—Writing Effective Contentions

Ask yourself the following:

☐ Do I provide evidence to prove that all of the statements in my contentions are facts?
☐ Do my contentions direct the arbitrator to the evidence?
☐ Are the photos and diagrams referenced and/or labeled?
☐ Do the contentions refer to Insured/Respondent/Witness statements?
☐ Are the findings of the police/medical/expert reports indicated and interpreted? Do they conflict with the insured’s statement?
☐ Did I discuss damages?
☐ Did I show the itemized arithmetic to the arbitrator?
☐ Do my estimates, etc. clearly substantiate my damages? Do they equal the itemization of the company claim amount?

Suggestions:

☐ Provide evidence to support all statements in the contentions that are critical to your theory of liability or defense and reference the evidence in the contentions/
☐ List your evidence in the order it is referenced. Use your evidence list as a guide to ensure that you have addressed and included all of your support referenced in your contentions.
☐ Use tabs to separate your evidence. The evidence should be provided in the listed reference order.
☐ Provide scene diagrams to show location of damage and paths from origin.
☐ Be sure all copies of photos and documents are clear.
☐ Use the words of your own insured or expert to build credibility.
☐ Tell the arbitrator what you want him/her to award. Be specific.
☐ As Applicant, assume the Respondent will deny liability and damages. Prove both. Remember, if the Respondent does not answer, both still need to be proven.
☐ As Respondent, address each theory of liability and/or recovery raised by Applicant and introduce and support alternative theories for the incident and the damage.
☐ Applicant may file amended Contentions to refute the Respondent’s contentions or Affirmative Defenses or when the respondent has submitted a Counterclaim to your original Applicant case. However, Applicant must still comply with the forum rules that all evidence must be received by AF no later than 10 business days prior to the hearing date, or request a reschedule hearing date no later than 3 days prior to the hearing date.
Contention Do’s:

Below are some things to consider when completing the Contentions Sheet:

- Organize your thoughts and evidence when writing Contentions.
- As Applicant, always include a clear and specific theory of negligence and/or right of recovery.
- As Respondent, defend each theory posed by the Applicant, and provide alternative explanations or theories when appropriate.
- Provide appropriate evidence to prove all critical statements supporting your theory of negligence or defense and your right of recovery.
- Include recorded statement of any party who lends credibility to your theory of negligence or defense.
- Use a clear introduction statement to alert the arbitrator to the nature of the dispute.
- Use of briefs of law to support statutes or case law referenced in your contentions.
- Include all investigative or expert reports ie: police, medical, fire, etc.
- Include copies of estimates and proof of payments to substantiate damages.