



# Arbitration Forums, Inc. Rules

**Effective August 1, 2020**

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

## **SECTION ONE Jurisdiction**

1-1 The Agreements limit jurisdiction to accidents or losses occurring in the United States, Puerto Rico, and the U.S. Virgin Islands. For PIP Arbitration, jurisdiction conforms to the statute or endorsement giving recovery rights in the state in which the accident occurred. For Medical Payments Arbitration, compulsory arbitration is applicable in states where medical payment subrogation claims are permitted by statute or judicial decision.

1-2 When a matter that should have been filed in arbitration under one of the Agreements is placed in litigation, the party filing in litigation must dismiss/discontinue the suit within 60 calendar days of notification of the adverse party's signatory status. By demanding that the matter be placed in arbitration, the adverse party is affirming that arbitration has jurisdiction over the dispute and thereby waives any affirmative defense/exclusion regarding jurisdiction once arbitration is filed. If the suit is not dismissed/discontinued, the party seeking removal of the litigation may be entitled to statutory interests and all costs and expenses the court deems appropriate. If the applicable statute of limitations has expired, the filing of suit will toll the statute of limitation for 60 calendar days from the suit dismissal/discontinuance. If arbitration is not filed within 60 calendar days of the dismissal/discontinuance, the expiration of the statute of limitations may be asserted as an affirmative defense/exclusion.

1-3 Compulsory arbitration is applicable to a maximum of

- \$100,000 company claim amount (total company-paid damages) in the Automobile, Medical Payment, Property, and Uninsured Motorists Forums.
- \$250,000 Contribution Sought Amount in the Special Arbitration Forum.
- The limit governed by the statute or endorsement creating the subrogation or direct action recovery right in the PIP Forum.

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

- (b) AF considers a claim and companion claim(s) for different lines of coverage as separate claims.
- (c) The legal fees are not considered part of the program limit unless the policy limit includes legal fees.
- (d) The deductible is not included as part of company claim amount (total company-paid damages).

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

For new Auto filings, a responding company may add other parties and/or argue the negligence of unnamed party(ies). Where the negligence of an unamend party(ies) is argued, the filing company may withdraw its application or allow the filing to be heard. If the filing company allows the case to be heard, it thereby agrees to accept the award, if any, against any responding company and waive its right to pursue the balance directly from any unnamed party.

## **SECTION TWO Procedure**

2-1 The filing company initiates arbitration by filing via AF's website. All amendments, reschedule requests, and evidence submissions (excluding physical evidence) must be received by the Materials Due Date posted by AF.

For new Auto filings, evidence must be attached to the filing when it is submitted, and amendments and reschedules are not allowed. The filing company will have the option to revisit the filing should a responding party assert policy limits, an exclusion, a damage dispute, or add a party.

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

2-2 The responding company shall answer via AF's website. The answer, as well as any amendments, reschedule requests, and evidence submissions (excluding physical evidence), must be received by the Materials Due Date posted by AF.

For new Auto filings, the response must be submitted by the response due date, and evidence must be attached when submitted. No amendments may be made after submission.

If the responding company has a counterclaim, it must include it when it responds online. It must be heard with the original arbitration case or recovery is barred. The sole exception is where the responding company shows through documentary evidence that payment to its insured was made on or after the Materials Due Date for the original filing or anytime thereafter.

In addition to the above, for new Auto filings, the responding company must show through documentary evidence that payment to its insured was made on or after the response submission date, or have indicated that salvage was pending at the time of the original filing.

2-3 If seeking legal fees, a company must include these amounts in the filing or they are waived; additionally the company must justify their request for reimbursement and submit evidence that supports the amount.

2-4 The parties must raise and support affirmative pleadings or defenses in the *Affirmative Pleadings/Defenses* section or they are waived.

For new Auto filings, any exclusion must be raised and supported by the responding company for the applicable coverage feature damages, or it is waived.

If a denial/disclaimer of coverage is being pled (see definition of Denial/Disclaimer of Coverage (b)), the case will be administratively closed as lacking jurisdiction so long as a copy of the denial/disclaimer of coverage letter to the party seeking liability coverage for the loss is provided as part of the evidentiary material submitted. If no such letter is provided or where the issue concerns concurrent coverage (Article First (b), Special Arbitration Agreement), the case will be heard and the arbitrator(s) will consider and rule on the coverage defense.

2-5 If a responding company disputes damages, it must present all damages arguments and disputed dollar amounts, if known, in the Dispute Damages section.

For new Auto filings, damages must be disputed, where provided (including a proposed amount).

Arguments not properly raised will not be considered by the arbitrator. This includes, but is not limited to, issues such as repair and/or rental amounts, causation, and partial exclusions.

2-6 All companion claims will be heard together if

- (a) They are related by the parties online or
- (b) The parties notify AF of the relationship prior to one of them being heard.

For new Auto filings, only companion claims under the same coverage will be heard together and only when they are submitted together.

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

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

2-9 Each party is permitted one reschedule of the Materials Due Date if selected

(a) By the Materials Due Date or

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

AF will notify all parties of the new Materials Due Date. AF will charge the requesting party a fee. Additional reschedules may be granted with consent of all parties. Companion cases that are related to be heard together will be treated as one claim (i.e., only one reschedule per party for all cases).

For new Auto filings, a responding company is permitted one extension of its response due date, so long as the current response due date has not expired. The party requesting the extension is notified of its new response due date. AF will charge the requesting party a fee. No additional extensions are allowed. Companion filings across different coverages are separate cases, i.e., one extension per coverage filing, and will be heard separately.

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

Deferment requests by the filing company will be automatically granted. A responding company may challenge the request if it believes the delay is not warranted. If challenged, the case will be heard and the arbitrator(s) will consider the validity of the request. If the request is upheld, the case will be deferred for one year from the date of filing. If the request is denied, the arbitrator will continue to hear the disputed issues.

Deferment requests by a responding company will be automatically challenged and the same process as outlined above will be followed.

For new Auto filings, a deferment request by any party will be granted. An adverse party may challenge the request if it believes the delay is not warranted. If challenged, an arbitrator will consider the validity of the deferment request. If the deferment is allowed, the case will remain deferred for one year from the deferment request date. If the deferment is not allowed, the case will continue as not deferred.

Companion cases that are related to be heard together will be treated as one claim (i.e., a deferment request applies to all related cases).

For new Auto filings, filings across different coverages are treated as separate cases. A deferment request applies to the specific coverage(s) selected.

Any subsequent deferment requests will follow the above procedure. AF will charge the requesting party a fee for subsequent request(s).

An affirmative defense/exclusion 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/exclusion at the time it becomes available.

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

2-12 Any party that participated in the original hearing may appeal a decision in the Property and Special Forums so long as the *Company Claim Amount* is \$10,000 and above (Property); the *Total Settlement Amount* is \$100,000 and above (Special).

(a) The appeal indicating the alleged error by the original arbitrator/panel must be submitted via [AF's website](#) within thirty (30) calendar days of the decision publication date.

(b) AF will notify the adverse party which will have thirty (30) calendar days from AF's notification to submit its response to the appeal via [AF's website](#). A party waives its right to respond if its response is not timely received.

(c) AF will have the original file, decision, and appeal positions reviewed by an appeal panel determined by AF. 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 when the case was originally heard. The appeal panel will review only the original file, decision, and the appeal positions.

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

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

### **SECTION THREE**

#### **Hearings**

3-1 AF will notify the parties at least 30 calendar days prior to the initial Materials Due Date and of any subsequent changes. For Special Arbitration cases, AF will give notice at least 50 calendar days prior to the initial Materials Due Date.

For new Auto filings, a responding company is notified 30 days prior to the response due date.

3-2 A case will be heard even if a responding company fails to answer.

3-3 One arbitrator will hear a case; however, a three-person panel may be requested if the Total Company-Paid Damages or Contribution Sought Amount (Special Arbitration) is \$15,000 and above.

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

For new Auto filings, filings across different coverages are treated as separate cases, and heard separately.

3-4 The arbitrator(s) may request briefs of law or clarification of submitted materials (including policy limit issues). AF will notify the applicable party(ies) of the due date for the requested

item(s). If the requested item(s) is not received by the due date, the case will be heard without them.

3-5 The arbitrator(s) may only consider

- (a) Affirmative pleadings or affirmative defenses/exclusions properly raised
- (b) Deferment requests that are supported in the *Deferment Justification* section
- (c) Evidence listed and attached/submitted
- (d) Amount entered as the *Total Company-Paid Damages, Contribution Sought Amount, and/or Legal fees*
- (e) Disputed damages if properly argued per Rule 2-5

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

3-7 A party may appear telephonically when a case is heard and include witnesses. The intent to do so must be noted where provided.

- (a) The representative may only clarify, at the arbitrator's request, its contentions and submitted evidence.
- (b) Insureds or witnesses may not appear without the presence of a company representative.
- (c) Insureds or witnesses may appear only if their written or transcribed recorded statement or report is listed as evidence and their appearance is known to AF and all parties. They may only clarify, at the arbitrator's request, such statement or report for the arbitrator and may not present testimony or additional evidence. Specifically, witness testimony is not evidential.
- (d) All parties will be dismissed after their appearance and will be subsequently notified of the decision.

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

3-9 A responding company may assert no coverage, a denial of coverage, or a policy limits defense via [AF's website](#) up to 60 calendar days from the publication of the decision if the

- (a) Filing company made its filing at least 120 calendar days before the statute of limitations expires; and
- (b) Responding company pleads its defense at least 60 calendar 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 inquiry or no action can be taken.

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

## **SECTION FOUR**

### **Decisions**

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

4-2 Pursuant to Article Third, the arbitrating companies must notify AF of a clerical or jurisdictional error via [AF's website](#) within 30 calendar 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 calendar days after publication of the decision.

4-3 Decisions will be posted on the AF website after the case is heard. Electronic signature(s) of the arbitrator(s) will be used.

## **SECTION FIVE**

### **Awards**

5-1 The parties shall pay all awards within thirty (30) calendar days of the decision publication date. Payments made as a result of the award are to be made only to the filing company and must include any deductible interest, if applicable, in the interest of good will between the companies.

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

(a) The prevailing company must immediately send a request for payment to the adverse company.

(b) If the award remains unpaid thirty (30) calendar days after the request for payment, the prevailing company may request AF's assistance with the award payment.

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

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

5-3 A filing company may file for supplemental damages if:

For new Auto filings, the supplemental damages were paid on or after the initial filing submission date.

For the Property and Special (for workers' compensation subrogation claims) programs, the supplemental damages were paid after the Materials Due Date of the original hearing or anytime thereafter.

For the PIP and Medical Payments programs, the supplemental damages were paid after the initial filing.

In all programs, the original liability decision is *res judicata*. The sole issue in these filings is the supplemental damages.

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

## **SECTION SIX Administration**

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

6-2 AF will return physical evidence (i.e., defective parts, components), 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.



## DEFINITIONS

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

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

**Affirmative Defense** – A complete defense that does not address the allegations, but instead asserts that the filing is excluded from compulsory arbitration. See also **Exclusion**.

**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 bailment and joint and several liability, which could change how damages are awarded.

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

**Clerical Error** – A mistake made by Arbitration Forums' staff or the arbitrator(s). Examples of AF staff error include not providing proper notice of filing or not assigning a requested three-person panel. Arbitrator errors include mathematical errors; switching the parties when recording the liability decision; referencing the lack of or need for evidence that was, in fact, submitted; applying, on his/her own, a state regulation or statute from a state other than the loss state; or misapplying an AF Rule or procedure. It is at AF's sole discretion to determine whether a correctible error was made.

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

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

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

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

**Construction Defect Claim** – (Special Arbitration) A construction defect claim includes both indemnity and expense, paid or prospective. For completed (paid) constructive defect claims, there is a combined award limit for indemnity and expense of \$250,000 per responding

company's insured per project. A perspective indemnity claim is not eligible for arbitration without consent of all parties. For prospective expense contribution issues, there is no monetary limit. All claimants (unit-residences) of a construction project, regardless of the manner or number of underlying claims, suits, or "companion claims" shall be considered as one claim for hearing and contribution limits.

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

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

**Deferment** – A postponement of a case being heard for one year from the date of filing or for new Auto filings from the deferment request date.

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

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

**Evidence** – All documentary or physical evidence submitted by a party. Parties are not permitted to see an opponent's evidence, except for evidence related to supplemental damages. Arbitrators are only permitted to consider evidence properly submitted by the parties.

**Exclusion** – A complete defense that does not address the allegations, but instead asserts that the filing is excluded from compulsory arbitration which precludes the arbitrator(s) from ruling on the disputed issue(s).

**Extension** – A postponement of the response due date by the responding party to prepare and submit its response. Only one extension may be requested by a responding party; a fee is incurred.

**Feature** – A set of damages from a claim, i.e., a damaged/injured vehicle/person.

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

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

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

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

**Publication Date** – The date when AF posts the decision on its website for the disputing members.

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

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

**Reschedule** – An extension of the Materials Due Date granted by AF at the request of a party(ies) or at AF’s discretion, not to exceed 60 days.

**Revisit** – An option that allows a recovering party to address specific issues raised by an adverse party regarding a jurisdictional exclusion, disputed damages, a newly impleaded party, and policy limits.

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

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

**Written Consent** – A documented agreement to binding arbitration by the party(ies). May be in the form of a letter or email. Answering a filing without a valid objection to jurisdiction is considered written consent.