



To: All New York PIP Arbitrators

Re: Summary of July 25, 2012, Loss Transfer Advisory Committee Meeting

The following discussion points from the July 25, 2012, Loss Transfer Advisory Committee meeting are being shared to help ensure consistency in understanding and application.

- I. AF Update – Online Filing – Mandatory Effective October 1, 2012
AF proposed rule revisions requiring all arbitration filings, responses, and evidence be submitted electronically effective October 1, 2012, which was approved. AF will begin communications immediately to ensure as many people who file or respond to NY PIP arbitrations are aware and establish user accounts for AF’s Web site.
- II. Amendments/Additions to AF’s NY PIP FAQ
Four new FAQ items (#34, 35, 36, and 37) were reviewed and approved to be added to AF’s Web site. FAQ #23 was amended to include the last sentence: “This applies retroactively regardless of when the surcharge was paid by the automobile insurer or self-insurer.”
- III. Affirmative Defenses and Deferments
There was discussion regarding a case that involved an affirmative defense regarding coverage as well as a deferment request (as the coverage issue was pending in litigation). A concern was raised as to why the case proceeded to hearing instead of being deferred. AF advised that the process has always been set up for cases involving an affirmative defense to proceed to hearing so it can first be determined by an arbitrator that arbitration has jurisdiction over the matter before the case is deferred for one year. If the affirmative defense and deferment request both concern a pending coverage issue, the deferment should be granted and affirmative defense “denied” (as it is currently pending). When the matter is placed back on “ready to hear” status after the deferment period expires, the Respondent can again assert the affirmative defense of coverage if it has been resolved and is applicable. Another option is for the Respondent to not assert the affirmative defense of no coverage and only request the deferment due to the pending litigation and resolution of the coverage issue. Again, once the deferment period expires, the Respondent could amend its response to add the affirmative defense of no coverage if this has been resolved and is applicable.

There was also a request for AF to add an online prompt for the Applicant to indicate that it is filing a “Loss Transfer” or “Priority of Payment” dispute.

- IV. Damages
A concern was raised that there has been a noticeable increase in the number of “frivolous” damage disputes. Some members noted that what is frivolous to one carrier might not be frivolous to another, and there was also a sentiment expressed that carriers should in good faith accept what other carriers do. After much discussion, the Department of Financial Services suggested that an Ad Hoc Committee of 4–5 active arbitrators meet

to work out what the problem/solution is regarding damages and report back to the full Committee at the next meeting.

V. NY PIP Hearings

A question was asked regarding the elimination of PIP hearings on Long Island. AF advised that since most NY PIP filings arise from Manhattan claims, it would be best for the users and arbitrators to centralize the hearings in the city. The Committee members understood and accepted AF's decision, but some were not pleased that AF had not communicated this change in advance. They asked AF to keep the Committee and front-line users informed of such changes as a courtesy.

VI. Last-minute answer submissions by Respondents

A request was made to give Applicants time after a response has been submitted to allow the Applicant to refute the Respondent's allegations. The concern had to do with the Respondent submitting its answer "at the last minute." AF advised that the rules currently include such time. Basically, the Applicant has three business days following the Materials Due Date to request a reschedule so it can amend its contentions. Further, with Online Filing, the Applicant is immediately notified as soon as the Respondent submits its answer. This was acceptable to the Committee.

VII. Non-payment of awards

As in numerous prior meetings, the issue of Respondents not paying awards was raised. The Department of Financial Services noted that this was not the forum to discuss that. If an award is not paid, recourse is through the court. The arbitration rules cannot provide for the recovery of attorney fees, costs, etc.

VIII. Decisions by AF Staff Arbitrators

A concern was raised regarding the term "Staff Arbitrator" being included on decisions and that if you have to move to vacate or affirm, you need the arbitrator's name. AF advised that it provides signed decisions when requested. The Department of Financial Services asked AF to look into including the arbitrators' names on all decisions, even those heard by AF staff arbitrators who are certified in NY PIP.

IX. Evidence

A request was made for AF to draft a FAQ item advising that it is up to the arbitrator to determine what is sufficient evidence. The Committee felt that there is not one specific thing, and that the answer may vary on the case submitted. After some discussion, the Committee asked the requestor to draft the FAQ and submit it to the Committee.

X. Arbitrator Feedback

The final discussion concerned arbitrator feedback and what steps AF took regarding "consistent bad decisions." AF advised it does review inquiries received, and this may result in a one-on-one coaching with the arbitrator or requiring him or her to take the writing quality decision class. In addition, what is deemed a "bad decision" by one party



may not, in fact, be a bad decision or require arbitrator feedback.

The next Committee meeting was scheduled for December 12, 2012.