ARBITRATION FORUMS, INC.
Exceptional service. Innovative solutions.

NY PIP Rules

Effective December 12, 2022 (applies to new cases filed in TRS)

What follows are the Procedures established by Arbitration Forums, Inc. (the administrator designated by the Superintendent of Financial Services) and approved by the Superintendent that apply to mandatory intercompany arbitrations pursuant to Section 65-4.11(d) of the New York State Insurance Department Regulation No. 68.

(1) Condition Precedent

(i) As a condition precedent to filing arbitration, a party requesting reimbursement of first-party benefits from another party, as provided in section 5105 or 5221(b) of the Insurance Law, shall make such request as soon as reasonably practicable on the prescribed "Inter-Company Reimbursement Notification Form."

(ii) Parties named on an arbitration filing shall only include "insurers" and "self-insurers" as those terms are defined in Article 51 of the Insurance Law; the Motor Vehicle Accident Indemnification Corporation (MVAIC); any company providing insurance pursuant to Section 5103(g) of the Insurance Law; and Compensation providers as defined in Section 5102(l) of the Insurance Law. Filings naming parties other than insurers or self-insurers will be promptly closed upon notification to Arbitration Forums.

(2) Initiation of Arbitration

(i) The filing company initiates arbitration by filing online via AF's website. The filing company will have the option to revisit the filing should a responding party assert a jurisdictional exclusion or dispute damages. Proof of damages shall include a computer printout or a ledger of benefits paid, kept in the regular course of business. The printout or ledger must include the name of the payee, amount paid, date of service, date paid, and the total amount paid. Arbitration shall be requested no later than three (3) years from the date when each claim payment was paid.

(ii) Submission of a case to arbitration shall have the same force and effect as to insurers and self-insurers as if litigation has been instituted. Further, if a matter within the compulsory provisions of this section is inadvertently placed in litigation, the initiation of such lawsuit will be deemed as a submission to arbitration:

(a) Upon request, the party filing the lawsuit shall discontinue the lawsuit; and
(b) Submit the appropriate arbitration filing within 60 calendar days from the date of the dismissal or filing of discontinuance with the Court. If the Statute of Limitations has expired prior to the dismissal/discontinuance, it shall be tolled for 60 calendar days from date of dismissal/discontinuance.
(c) If the issue of coverage is in litigation, the Statute of Limitations shall be tolled pending final determination of such the issue. The appropriate arbitration filing must be made within 60 calendar days of the Court order that determines the issue of coverage by the Court.

(iii) Where there are multiple injured parties (features) arising from the same accident, subject to the compulsory jurisdiction of this Section, each feature must be sought individually in a case. The liability decision on the first filing will be conclusive to the same named parties.

(iv) Upon receipt of AF's notice of filing, the responding company shall answer online via AF's website by the Response Due Date. Before the initial response due date expires, a responding company is entitled to one extension of its response due date.

A responding party shall:

(a) make any corrections to the information entered on its behalf by the filing company, including a request to change the Loss Date and/or Loss State, if necessary.
(b) raise and support jurisdictional exclusions in the Jurisdictional Exclusion section.
(c) list and attach all evidence that will be presented for consideration by the arbitrator(s).
(d) if damages are disputed, present its arguments and proposed dollar amount in the Dispute Damages section. If not disputed, damages will be deemed uncontested.

AF will notify the filing company electronically when a response has been submitted.

(v) Except where MVAIC is the filing company, a filing will be closed as lacking jurisdiction if the responding company indicates there was no policy in effect on the loss date. If a policy was in effect but the responding company denies coverage for the subject claim (selects "Yes" for "Has coverage been denied for this claim?"), it must explain the reason and submit a copy of its denial of coverage letter to the insured. The coverage denial shall be subject to consideration by the arbitrator. In either instance, should coverage subsequently be affirmed, arbitration may be re-filed; the original filing date will apply.

(vi) If a settlement has been reached between the parties prior to a case being heard, the filing company must immediately withdraw its filing online.

(vii) Any party may request a deferment. Justification for the deferment must be included in the Deferment Justification section. The deferment will be administratively granted for one-year from the date of filing. The requesting party may withdraw the deferment at any time. A deferment request is also subject to a challenge by another party. If the deferment is challenged and an arbitrator denies the challenge, the case will remain deferred. If an arbitrator upholds the challenge, the parties will need to complete their submissions so the case can proceed to hearing on the disputed issues. Any subsequent deferment requests shall follow this same procedure. AF will charge the requesting party with a deferment fee on subsequent requests. Companion claims that are filed together will be treated as one case (i.e., a deferment request applies to all claims).

(viii) Evidence submitted for arbitrator consideration is confidential and will be purged 70 days after the decision is published, unless AF has been notified of, and is reviewing, a potential clerical or typographical error. The parties involved in arbitration shall safeguard all evidence containing personal information from unauthorized access by any person or entity not directly involved in the arbitration. Any liability resulting from the unauthorized access to personal information shall lie with the party/parties who failed to safeguard such personal information.

(3) Designation of Arbitrator(s)

(i) Arbitration Forums shall designate members of local arbitration panels, which shall consist of authorized representatives on the basis of their experience and qualifications and who shall serve without compensation. Arbitration Forums shall designate one disinterested member of such panel to serve as an arbitrator in each case. However, a party may request a three-person arbitration panel in a specific case.

(ii) Arbitration Forums shall designate an arbitrator(s) for all hearings on a random basis.

(iii) Neither Arbitration Forums nor any designated arbitrator(s) shall be made a party to any court proceeding relating to an arbitration award. The participation of a party in an arbitration proceeding shall constitute a waiver of any claim against the arbitrator(s) and/or Arbitration Forums for any act or omission in connection with any arbitration conducted under these rules. Arbitration Forums shall transmit to the superintendent copies of any legal papers served upon them or any arbitrator, relating to any stay or appeal of an arbitration proceeding or award.

(4) Arbitration Proceedings

(i) AF will notify a responding party at least 30 calendar days prior to its Response Due Date and of any subsequent changes. A filing will be heard even if the responding company fails to answer after the requisite notice has been sent. In the event either party to the hearing questions proper notice following an award issuance, Arbitration Forums shall schedule the case for a rehearing with the consent of the adverse party.

(ii) Any adjournment of the hearing shall be on consent of all parties or at the discretion of the arbitrator(s). The arbitrator(s) may grant an adjournment for cause or to request memos of law or clarification of submitted materials.

(iii) The filing or responding company may appear virtually when a case is heard. If an appearance is requested to be made, the intent to do so must be indicated in the filing or response.

(iv) The arbitrator will only consider evidence that has been listed and attached to the filing by the parties. Evidence that is obtained subsequent to submitting the initial filing or response, and is not listed, may be presented for consideration only at the arbitrator's discretion.

(v) 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.

(vi) A party may present witnesses at the arbitration hearing. If a witness will be presented by a party, the intent to do so must be indicated in the filing or response. If a witness attends the hearing without the requisite prior notice, the witness may not appear before the arbitrator without the consent of the other party(ies) and the arbitrator(s) approval. Insureds or witnesses may not appear without the presence of a company representative.

(vi) Representatives may not be present while the arbitrator(s) is deliberating.

(5) Arbitration Decisions

(i) A decision of an arbitrator, or a majority of an arbitration panel, on issues of fact or law is final and binding. However, this provision does not preclude Arbitration Forums from correcting a clerical or

typographical error on the part of either Arbitration Forums or the arbitrator(s) so long as the error is brought to Arbitration Forums' attention within 30 calendar days of the publication of the decision. Any such correction must be approved by the arbitrator(s). In the event a party to the hearing questions an arbitrator(s) failure to address a jurisdictional exclusion within an award, Arbitration Forums shall schedule the case for a rehearing with the consent of the other party or parties.

(ii) The arbitrator(s) may, upon their own initiative, render a decision in favor of a responding company without production of evidence by the responding company if the arbitrator(s) determines, following presentation of the filing company's evidence, that the filing company has not made out a prima facie case.

(iii) Decisions of the arbitrator(s) shall be promptly rendered after consideration of the case.

(iv) The decision(s) of the arbitrator(s) shall include a statement for the basis of the award findings, such as lack of proof, contributing negligence, apportionment of negligence or other controlling principles of law, and other relevant evidence and issues. All awards shall be issued electronically in a form designated by Arbitration Forums.

(v) A filing company may file for basic benefits paid not included in a prior filing so long as the Statute of Limitations has not run out on any one of those benefits. If there has been a hearing and a liability decision made, the liability decision is conclusive. A decision of an arbitrator on the liability issue is conclusive only of the controversy in the claim submitted to the arbitrator by the same parties and has no legal effect on any other claim or lawsuit arising out of the same accident or occurrence between different parties. A decision of an arbitrator on issues other than liability is not conclusive as to the same or similar issues in any other claim.

(vi) Decisions will be posted on the AF website promptly following the hearing; AF will provide electronic notification to the parties of a decision's publication. Published decisions are electronically published, in writing, as electronically signed and electronically affirmed by the arbitrator(s).

(vii) The decision of a majority of an arbitration panel shall be final and binding upon the insurers to the controversy. Payment of the award shall be made to the prevailing party within 30 calendar days from the date of receipt of the award.

(viii) If the decision concerns only the issue of priority of payment and the filing company is the prevailing party, the responding company held responsible for the first-party benefits shall promptly assume further handling of the claim. The responding company shall promptly reimburse the filing company for the amount of benefits paid to date and any allocated claims expenses paid in conjunction with the handling of the claim. The filing company will continue payments to the eligible injured person until the responsible responding company has assumed obligation for the claim.