

Arbitrator Procedures for Concurrent Coverage/Priority of Payment Issues FAQ

For all questions below, please assume that Alpha refers to the Recovering Party and Beta refers to the Adverse Party.

Q. If Beta only challenged damages, may I state that Beta did not dispute being the primary carrier, or do I still have to make a primacy determination based on the evidence and explain it?

A. If Beta admitted to being the primary carrier and indicated it is only disputing damages, then, yes, the arbitrator can simply note Beta's admission and address the damages issue only. However, if Beta did not address primacy of coverage in its response and only argued damages, the arbitrator should still check (and explain) whether Alpha has made a prima facie case for their right of recovery.

Q. What should the arbitrator indicate when it is determined that both policies are in force and applicable on an equal level? Can both policies be co-primary?

A. If neither has proven that the other should cover the damages on a primary basis, both can be considered "yes" for the priority of payment question. Since Alpha is seeking recovery against Beta, the arbitrator should calculate the portion Beta will owe for Alpha's claimed damages. Depending on evidence provided for the coverage and the state involved, the calculation may be shared on a pro-rata basis or on a 50/50 basis. Either way, deductibles may have to be compared to see if the policies trigger at different damage points.

Q. Will arbitrators need to recertify to hear concurrent coverage/priority of payment disputes?

A. No, there is no recertification required. Field arbitration managers will set the attribute in an arbitrator's profile based on their experience. This includes arbitrators who have been hearing concurrent coverage disputes filed in the Special Forum.

Q. What if each party claims its respective policy is excess over the other?

A. The facts of the occurrence should be compared to the wording of each policy or contract to see if there are differences in how each coverage is applied. It is possible that the policies/contracts are both equally excess and, therefore, concurrent in their

application of coverage. In this case, marking them both as “no” is effectively the same as marking them both as “yes,” with Beta owing a portion of the award to Alpha. Remember to compare any applicable deductibles and review the case carefully to see if there is evidence supporting a 50/50 split or if the evidence supports a pro-rata split, and enter any potential award accordingly.

Q. Can a filing company recover a deductible paid by their insured in a concurrent coverage/priority of payment dispute as a part of a claim for contribution?

A. Yes. The amount of the deductible should be included in the Company – Paid Damages section on the Feature Information page of the filing.

Q. What about cases involving an Uber policy and an Auto policy that both provide coverage? Do these disputes still belong in the Special Forum?

A. If the claim is for first-party damages, the dispute between the Uber driver’s insurance and the host vehicle personal auto policy should be filed in Total Recovery Solution[®] (TRS[®]) for a collision feature with a concurrent coverage right of recovery. If the claim is for third-party damages paid out to a different party, then the dispute between the Uber driver’s insurance and the host vehicle personal auto policy should be filed in Special as a contribution dispute for third-party property damage.

Q. Even with first-party damages only, there are cases involving two policies covering damage for the same vehicle. How does the arbitrator determine primacy in that case?

A. The evidence should be reviewed to determine if one policy is primary or both are coprimary.

Q. If the Responding Party does not dispute being primary but only disputes damages, does TRS check the boxes and skip to damages, like in the Auto, MPC, and PIP forums?

A. Not at this time. Changes to TRS are made incrementally in keeping with AF’s agile software development approach. We hope to add this functionality soon to eliminate the need to complete the current workflow step.

Q. *Can carriers now file any concurrent coverage case, whether it is for first-party coverage or third-party coverage (contribution) in the Auto Forum?*

A. Concurrent coverage disputes for first-party vehicle damages should be filed in TRS under the collision, comprehensive/OTC coverage group and the concurrent coverage right of recovery path. Concurrent liability coverage disputes should be filed in the third-party contribution (Special Arbitration) coverage group, and the contribution for concurrent coverage right of recovery. Any misfiling may be subject to a jurisdictional exclusion(s) raised by other parties and can lead to a second filing fee to refile in the correct platform.

Q. *What happens when the filing company files a case under the wrong right of recovery?*

A. The Responding Party should select the “wrong right of recovery” jurisdictional exclusion with a justification explaining that the wrong right of recovery was selected. For example, negligence was selected, but the issue is concurrent coverage or vice versa. The filing company will be able to refile under the correct right of recovery. Failing that, if an arbitrator determines that a filing has been made under the wrong right of recovery (negligence versus concurrent coverage), they should alert AF so that the case can be withdrawn and refiled properly.

Q. *Can the Adverse Party change the right of recovery entered by the Recovering Party?*

A. No. Only the Recovering Party can change the right of recovery. All features, counterclaims, and supplements filed on a case are restricted to the coverage group and right of recovery entered by the original filing party.