



# **Arbitration Forums, Inc. Rules**

**Effective August 27, 2023**

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 include 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, occurrences, or events 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 may deem 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 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 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 the total company-paid damages.

1-4 The recovering party should name all involved member companies and any consenting non-member companies, if applicable, in its filing. A responding party may add other parties and/or argue the negligence of unnamed party. Where the negligence of an unnamed party is argued, the recovering party may withdraw its filing and re-file at a later date or pursue recovery outside of intercompany arbitration if a non-member is involved, or allow the filing to be heard. By allowing the filing to be heard, the recovering party thereby agrees to accept any award against a responding party and waive its right to pursue the balance directly from any unnamed party. For OLF cases, the recovering party also has the option to amend its filing upon receipt of the response to add other members or consenting non-members.

## **SECTION TWO**

### **Procedure**

2-1 The recovering party initiates arbitration by filing via AF's website.

For TRS filings, evidence must be attached to the filing when it is submitted. For Auto filings, evidence attached supporting future damages sought will be viewable to the responding party for the purposes of the specific arbitration filing and may not be copied for use in any other claim arising out of the same accident. Neither amendments nor reschedules are allowed; the recovering party will have the option to revisit the filing should a responding party assert policy limits, an exclusion, a damage dispute, or add a party.

For OLF cases, all amendments, reschedule requests, and evidence submissions must be submitted by the Materials Due Date posted by AF.

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 party shall answer via AF's website.

For TRS 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 party has damages under its insured's policy and is seeking recovery 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 party shows through documentary evidence that payment to its insured was made on or after the response submission date, or, for new Auto filings have indicated that salvage was pending at the time of the original filing.

For OLF cases, the answer, as well as any amendments, reschedule requests, and evidence submissions, must be received by the Materials Due Date posted by AF. Damages not included

in the response may be subsequently filed so long as the responding party 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.

2-3 If seeking legal fees, a company must include these amounts or they are waived. The justification for them must be explained and the supports must be listed and submitted as evidence.

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

If a denial/disclaimer of coverage is being pled (see definition of Denial/Disclaimer of Coverage [b]), the party will be ruled out of jurisdiction so long as a copy of the denial/disclaimer of coverage letter to the party seeking liability coverage for the loss is submitted as evidence. If no such letter is provided, or where the denial concerns concurrent coverage, the case will be heard and the arbitrator will consider and rule on the coverage defense.

2-5 For TRS filings, damages must be disputed on the Feature Response workflow step. For new Auto filings, evidence attached supporting disputed damages will be viewable to the recovering party and other responding parties, if applicable, for the purposes of the specific arbitration filing and may not be copied for use in any other claim arising out of the same accident.

For OLF cases, damages must be disputed in the Dispute Damages section, including all damages arguments and disputed dollar amounts, if known.

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

For OLF cases, 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.

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

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

2-9 For TRS filings, a responding party 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.

For OLF cases, 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., one reschedule per party for all cases).

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.

For TRS 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. Filings across different coverages are treated as separate cases. A deferment request applies to the specific coverage selected.

For OLF cases, deferment requests by the recovering party will be automatically granted. A responding party may challenge the request if it believes the delay is not warranted. If challenged, the case will be heard and the arbitrator 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 party will be automatically challenged and the same process as outlined above will be followed. 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).

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

An affirmative defense/jurisdictional 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/jurisdictional 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. Failure to do so may result in case withdrawal if raised as an affirmative defense/jurisdictional 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 Total Company-Paid Damages 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 For TRS filings, a responding party is notified 30 calendar days prior to the response due date for the initial filing.

For OLF cases, the parties are notified 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.

3-2 A case will be heard even if a responding party 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.

3-4 The arbitrator may request briefs of law or clarification of submitted materials (including policy limit issues). AF will notify the applicable party of the due date for the requested item. If the requested item is not received by the due date, the case will be heard without it.

3-5 The arbitrator may only consider:

- (a) Affirmative pleadings or affirmative defenses/jurisdictional exclusions that are properly raised.
- (b) Deferment requests that are supported in the Deferment Justification section.
- (c) Evidence listed and attached.
- (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 present witnesses. The intent to do so must be noted where provided.

- (a) The representative may only clarify, at the arbitrator's request, its arguments 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 AF and all parties know of their appearance. 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 they personally or their company has any direct or indirect material interest.

3-9 A responding party may assert the coverage defenses of no liability policy in effect, denial of coverage, policy limits, or liability deductible/SIR via [AF's website](#) up to 60 calendar days from the decision publication date and a minimum of 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 or liability deductible/SIR must accompany the inquiry or no action will be taken.

When an award exceeds policy limits, the recovering party 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 recovering party 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 of the arbitrator will be used.

## **SECTION FIVE**

### **Awards**

5-1 A responding party shall pay an award 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 recovering party. Payments must include any deductible interest, if applicable, in the interest of good will between the companies.

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.

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

- (a) The recovering party must send a request for payment to the responding party.
- (b) If the award remains unpaid thirty (30) calendar days after the request for payment, the recovering party 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 recovering party 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 recovering party may file for supplemental damages if:

For TRS filings, the supplemental damages were paid on or after the initial filing submit date. For new Auto filings, evidence submitted by the parties to support or dispute the supplemental damages will be viewable by the parties and may not be copied for use in any other claim arising out of the same accident.

For Special Arbitration workers compensation subrogation filings, after the Materials Due Date of the original hearing or anytime thereafter.

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 recovering party incurs a filing fee payable to AF. A responding party that files a counterclaim shall also incur the filing fee. In Special Arbitration, all parties incur the 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 a hearing at the arbitrator's discretion 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. 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 their 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 re-litigation 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 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 or coverage.

**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 prospective 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 under the same coverage or forum. (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 and TRS PIP and Medical Payments 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 for consideration by the arbitrator. With the exception of evidence attached to the feature damages section in the Auto forum, evidence is not viewable to adverse parties.

**Exclusion** – A complete defense that does not address either liability or damages arguments, but instead asserts that the party or the filing is excluded from compulsory arbitration.

**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.