Automobile Subrogation Arbitration Forum

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Chapter One
Arbitration Forums, Inc.
Background

KEY POINTS

This chapter covers:

a) The evolution of arbitration in the insurance industry

b) Arbitration Forums’ relationship with the insurance industry

Arbitration Forums Inc.
Background

The Federal Arbitration Act of 1925 establishes the validity of agreements to arbitrate disputes arising out of maritime, interstate, or foreign commerce. This statute also allows parties to agree to arbitrate. Many insurers are signatories to agreements that provide for arbitration. The Uniform Arbitration Act and subsequent state acts further address arbitration agreements. The involved parties agree to submit any applicable dispute that may arise between them to arbitration instead of litigation. These agreements mandate the disputes the parties must take to arbitration.

An effort by the casualty insurance industry to seek arbitration as an alternative to litigation began in 1943 in New York. The New York City Claim Managers ’Council appointed a committee to serve as an arbitration board. Members of the Claim Managers’ Council agreed to arbitrate certain automobile physical damage subrogation claim disputes arising between themselves. The arbitration board confined its service to members of the Association of Casualty and Surety Companies and the National Association of Mutual Casualty Companies in metropolitan New York.

By 1951, the casualty insurance industry throughout the United States recognized the success of this New York venture. The insurance companies improved their intercompany working relationships by reducing the amount of litigation and the related costs. Due to this local success, the Combined Claims Committee rewrote the original agreement and sponsored it as a nationwide program.
During the 1950s, the Combined Claims Committee created two additional arbitration programs. The first program was the *International Reciprocal Arbitration Agreement*, which expanded the Automobile Arbitration program to accidents involving U.S. and Canadian insureds. In 1957, the committee created the second program with the *Special Arbitration Agreement*.

Although the Combined Claims Committee established Special Arbitration to settle disputes between liability carriers of *casualty insurance* policies, it was to become the cornerstone for commercial disputes. Participants in commercial disputes may include *self-insured* businesses or commercial insureds with large retentions. Under joint and several statutes, a contractual obligation may bind a non-negligent party to a negligent tortfeasor that makes one or both obligated to pay damage to a third party. The negligent act may be one that causes personal injury or property damage. The Special Arbitration Forum’s purpose is to determine *contribution* or *apportionment* of liability among third party insurers and to resolve overlapping coverage disputes.

Through the early years, the arbitration programs grew to 480 participating companies. By the late 1960s, arbitration committees were hearing and closing almost 100,000 cases annually. The development and administration of the arbitration program continued to dominate more time at the Combined Claims Committee meetings. As a result, in 1967, the Combined Claims Committee transferred its arbitration sponsorship to an independent committee called the Committee on Insurance Arbitration.

The Committee on Insurance Arbitration represented all segments of the insurance industry. It included companies belonging to three trade associations, along with companies without any trade association affiliation. This insurance arbitration committee became the largest system of its kind in the world, and they recognized the need to create a legal entity to administer the arbitration programs. In 1981, this concern led to the incorporation of Insurance Arbitration Forums (IAF), a not-for-profit company. With the formation of the corporation, the Board of Governors of the Committee on Insurance Arbitration became the Board of Directors for the new corporation.

Insurance Arbitration Forums, Incorporated remained the corporate name until 1986, when the Board of Directors resolved to eliminate the word “Insurance” from the name. This change reflected the expansion of AF’s programs to include arbitration situations outside the insurance company arena. These additional mediation and arbitration services fulfilled a direct need expressed by the insurance industry. Because AF always provided an objective, neutral administrative service, the Board felt the new name would better express its mission and goals.

AF is a partner to the insurance industry. It is an integral part of the claim *settlement* process and provides an essential service as administrator of the arbitration process. Members created and control this corporation. Currently, the Board of Directors is comprised of representatives from the insurance trade associations. Two trade associations, representing nearly 1000 different carriers, have permanently assigned positions on the Board. The associations are
the American Insurance Association (AIA) and the Property Casualty Insurers Association of America (PCI)—formerly the National Association of Independent Insurers (NAII) and the Alliance of American Insurers (AAI). Each trade association selects additional board members from their small, medium, and large carriers.

As it grew, AF moved its corporate offices in 1983 from New York City to Tarrytown, New York. In 1992, it moved to its current corporate headquarters in Tampa, Florida. During the early 1990s, the Board of Directors and management became more responsive to member needs by re-engineering the corporation and developing automation systems.

AF continues to fulfill its role as a respected and efficient administrator of *alternative dispute resolution* (ADR) services. ADR collectively refers to various means of resolving controversies without litigation, and is usually voluntary. When a company voluntarily sign the agreement to arbitrate future controversies within specific parameters, arbitration becomes compulsory for member companies for those controversies.

AF offers and maintains unsurpassed professional service to its members and other users at a minimum cost. It is a service-oriented company with a roster of nearly 4,000 highly skilled and objective arbitrators, many of whom are provided by the member companies. Annually, these professionals hear and decide approximately a quarter-million disputes involving nearly half a billion dollars in claims.

Arbitration Forums has grown from an idea in 1943 to the recognized and respected corporation that it is today. The corporation is constantly striving to achieve the highest quality in every service offered. We hope that this reference guide and the revised *rules and regulations* attest to this fact.
Chapter Two
Automobile Subrogation Arbitration
A Forum Overview

KEY POINTS

This chapter presents:

a) The benefits of using the Automobile Subrogation Arbitration Forum

b) A general description of the Automobile Subrogation Arbitration Forum

Automobile Subrogation Arbitration
A Forum Overview

Arbitration Forums’ Automobile Subrogation Forum is designed to resolve intercompany subrogation disputes amongst insurers, self-insureds and large retention commercial insureds involving automobile physical damage not in excess of $100,000 unless agreed upon by all parties. Cases submitted regarding the Automobile Subrogation Forum include:

• The driver of a truck traveling at an excessive rate of speed collides with another vehicle that changed lanes without signaling. Insurers cannot agree on the respective liability of the two drivers.

• Two drivers are traveling side-by-side on a roadway which is narrowing to a single lane. A side-swipe occurs. Is one party more at fault than the other?

• The liability carrier for an at-fault driver disputes the severity and extent of the damages alleged by the collision carrier for the negligent-free vehicle. While liability is clear, the matter is submitted to the Auto Program for resolution of the damages dispute.

• A car being used as a temporary replacement vehicle is returned to the rental car company with moderate damage to the right quarter-panel. The renter’s collision carrier denies the subrogation claim based on the insured’s/renter’s assertion that the damage was already there when the vehicle was rented. The matter is submitted to the Auto Program for resolution.
Chapter Three
Automobile Subrogation Arbitration Agreement Definitions

KEY POINTS
This chapter presents:

a) Critical terminology required for understanding the Automobile Subrogation Arbitration Agreement.

b) Definitions of key words used for interpreting the meaning and/or application of an Automobile Subrogation Arbitration rule.

Automobile Subrogation Arbitration Agreement Definitions

Arbitration Forums, Inc., as a nationwide company and in fairness to companies that have signed or will sign the Automobile Subrogation Arbitration Agreement, decided there was a need to define certain words. The definitions apply only within the Agreement and its authorized Rules and Regulations.

The following are definitions of terms as applied to the Automobile Subrogation Arbitration Agreements and Rules. If a word is unique to only one of the programs, the program is identified in parentheses following the definition.

Words that appear in bold throughout this book can be found in the following definition section and those that are italicized can be found on the Auto-Form.

Adjournment - An interruption of a hearing at the arbitrator’s discretion for a maximum of 30 days.

Applicant – The company initiating the proceeding by filing an application (S-Form and Contentions Sheet).

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.

Companion claim - Any additional claim(s) by or against a participating party arising out of the same accident, occurrence, or event, which falls under Automobile Arbitration or another AF compulsory forum.
**Counterclaim** – A claim resulting from the same accident or loss as the original claim, presented by the original Respondent (Counter-Applicant) against the original Applicant (Counter-Respondent) in an arbitration proceeding.

**Deferment** - A postponement of a hearing for a one-year period.

**Denial of Coverage** - A company’s assertion that the entity(ies) and/or individual(s) involved in the accident, occurrence, or event in dispute is not covered under the company’s policy of insurance, or that there was no policy in effect at the time of the accident, occurrence, or event. (It is not a denial of coverage as long as the company admits that the party(ies) is an insured under the policy in effect at the time of accident, occurrence, or event.)

**Jurisdictional error** - Occurs when a panel improperly proceeds with a hearing without resolving a plead potential jurisdictional impediment or dismisses a case where a party has not raised an objection of jurisdiction.

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

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

**Publication date** - The date when AF transmits or mails the decision to all interested parties.

**Res judicata** - A judgment, decree, award, or other determination that is considered final and bars relitigation of the same matter.

**Reschedule** - An extension of the hearing date granted by AF at the request of the party(ies) not to exceed 60 days.

**Respondent** – The company or companies against whom the Applicant initiates arbitration. All references to Respondent apply to all answering companies.

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

**Written consent** - A documented agreement to binding arbitration by the party(ies). Answering a filing without an objection to jurisdiction is considered written consent.
Chapter Four
Article First
Compulsory Provisions

KEY POINTS

Upon completion of this chapter, you will be able to:

a) State the requirements for compulsory arbitration.

b) Describe the factors that determine if a particular situation does not apply to the Automobile Subrogation Arbitration

By signing this Agreement, the company accepts and binds itself to the following

Article First
Compulsory Provisions

Signatory companies must forego litigation and arbitrate any personal or commercial automobile damage subrogation or self-insured automobile damage claims through Arbitration Forums, Inc. (herein after referred to as AF).

The Automobile Subrogation Arbitration Agreement is a legal contract, and a signatory company accepts and binds itself to all of the Forum’s Articles and Rules by signing the Automobile Subrogation Arbitration Agreement.

Article First details the type of claim dispute that members must arbitrate in the Automobile Subrogation Arbitration Forum. Simply, the type of claim dispute heard under this Agreement is between a member with an automobile physical damage claim and another member(s) who allegedly is liable for the damages. The dispute may concern liability, damages, or both.

A claim filed in the Auto Forum may consist of more than just a collision or comprehensive payment. A claim may include an itemized list of losses, such as towing, storage, rental reimbursement, and salvage expenses provided they were paid out of the insured’s policy. However, the disputed claim amount cannot include a company’s normal operating expenses or an insured’s out-of-pocket expenses.
Another important point is that the member filed against (Respondent) is not limited to an automobile liability insurer. A Respondent may be a general liability carrier, homeowner’s liability carrier, etc. Any member who may be liable for the Applicant’s damages may be named as a Respondent.

The following are some examples of Auto Forum claim disputes:

- An automobile is damaged because of a malfunction at drive-thru car wash.
- A florist’s delivery van is struck by an automobile at an intersection.
- A defective part causes a tractor-trailer driver to lose control and overturn.

Rule 1-3, authorized by this Agreement, limits compulsory arbitration to a claim that is $100,000 or less. Larger claims may be filed, however, with all parties consent.

Over 3,500 carrier and self-insured signatories to the Auto Agreement receive many benefits. This easy-to-use forum is an excellent way to reduce the expense and hassle of time-consuming litigation. The low cost of arbitration allows you to pursue recovery of all disputed claims. Plus, the expedience of the process will enable you to resolve a claim dispute and close your claim file is 90 days or less.
Chapter Five
Article Second
Exclusions to Compulsory Arbitration

KEY POINTS

Situations that exclude a claim or suit from compulsory Automobile Subrogation Arbitration:

a) Non-signatory

b) Cause of action or liabilities do not exist

c) Retrospective or experience rated policies

d) Policy limits

e) Denial of coverage

f) Litigation initiated before signing the Agreement

g) Insured’s consent required for settlement

Article Second
Exclusions

No company shall be required, without its written consent, to arbitrate any claim or suit if:

a) it is not a signatory company nor has given written consent; or

b) such claim or suit creates any cause of action or liabilities that do not currently exist in law or equity; or

b) its policy is written on a retrospective or experience-rated basis; or
d) any payment which such signatory company may be required to make under this Agreement is or may be in excess of its policy limits. However, an Applicant may agree to accept an award not to exceed policy limits and waive their right to pursue the balance directly against Company 2’s insured; or

e) it has asserted a denial of coverage; or

f) any claim, which a lawsuit was instituted prior to, and is pending, at the time the Agreement is signed; or

g) under the insurance policy, settlement can be made only with the insured’s consent.

Article Second lists seven exclusions to the compulsory provisions contained in the Automobile Subrogation Arbitration Agreement’s Article First. If any of these exclusions apply to the dispute or suit in question, the companies are not required to file in the Automobile Subrogation Arbitration Forum without written consent. However, companies may submit such a case with the written consent of all parties involved. For an arbitrator to consider excluding a case filed in Auto Arbitration, an objecting party must answer the filing and raise the exclusion as an affirmative defense in the Affirmative Defense section of the Contentions Sheet.

Article Second, subsection (a) states a company is not required to participate in Auto Arbitration if it is not a signatory to the Agreement nor has given its written consent. Chapter 7, Article Fourth discusses how a non-signatory can participate by giving its written consent.

Subsection (b) reinforces that an arbitrator or the parties to arbitration cannot create a cause of action or liability that does not exist. They must work within the statutes and case law that exist where the accident occurred. A company can also use all of the defenses that are available in a court of law, including an affirmative defense.

The third exclusion, subparagraph (c), eliminates the requirement for arbitrating claims made against retrospective or experience-rated policies. This exclusion also applies to AF’s other arbitration forums. A retrospective or experience rating plan is a method of computing an insured’s insurance premiums based upon the actual losses incurred over a stated period, normally the policy year. The insurer establishes an initial rate and then adjusts it according to the insured’s actual losses. A retrospective rating plan arbitration decision would indirectly affect the insured’s interest because of the rate/loss experience relationship, and, for that reason, a claim under such a policy is not a case for compulsory arbitration.

If the case involves a retrospective or experience based policy, one of the insurers must raise the issue before the hearing. The insurer issuing the policy may give its consent, either written or implied by silence, and the Auto Arbitration arbitrator will hear the case.

According to Article Second (d), the Agreement cannot compel a member to arbitrate a claim if a payment that could be required is or may be in excess of its policy
limits. No company is required to arbitrate where an Auto Arbitration decision could expose one of the parties beyond its policy’s dollar limit. However, a party may agree to accept an award that falls within another party’s policy limit, even though the amount actually owed exceeds the limits.

The fifth exclusion to Automobile Subrogation Arbitration’s compulsory provisions involves coverage denial situations. A company should base its coverage denial on the fact that the company’s policy does not cover the individual or entity seeking coverage for the claim or suit or that there was not a policy in effect at the time of the incident at issue. Before objecting to jurisdiction based on a coverage denial, an insurer should be aware of Rule 2-9 (Chapter 24). If a case is wrongfully removed from arbitration because of a coverage denial and coverage is admitted later, the objecting company must reimburse the other company for legal expenses and any court costs.

Article Second, subsection (f) excludes a claim if litigation was filed before the company signed the Automobile Subrogation Arbitration Agreement. The Agreement takes effect on the date it is signed. It is not to be used as a means to avoid any previous legal obligations including pending litigation. All claim disputes not in suit the date the company signs the Agreement must proceed in arbitration if the parties are unable to negotiate a settlement.

The seventh exclusion indicates that a party does not have to use Auto Arbitration to resolve a dispute if the terms of the insurance policy requires the insured’s consent to settle. The purpose of this exclusion is to avoid the possibility of the Agreement interfering with the contractual rights between an insured and an insurer. Article Second, subsection (h) does not completely preclude the possibility of arbitration. A carrier faced with this situation can secure its insured’s consent to proceed through arbitration. If the insured agrees, arbitration can assume jurisdiction.
Chapter Six
Article Third
Decisions

KEY POINTS

This chapter discusses:

a) Local jurisdictional law and equitable considerations

b) Accepted claims practices

c) Final and binding nature

d) Clerical or jurisdictional error

e) Res judicata and collateral estoppel

Article Third
Decisions

The decision of the arbitrator(s):

a) shall be based on local jurisdictional law consistent with accepted claim practices.

b) is final and binding without the right of rehearing or appeal. However, this does not preclude AF from correcting a clerical or jurisdictional error of an arbitrator(s) or AF staff.

c) is neither res judicata nor collateral estoppel to any other claim or suit arising out of the same accident, occurrence, or event except where an Applicant seeks recovery of supplemental damages as allowed under the Awards section of the rules. The decision is conclusive only of the issues in the matter submitted to the arbitrator(s) and only as to the parties to the arbitration. The admissibility of the decision in any other proceeding is not intended, nor should be inferred from this Agreement.
All matters concerning an arbitration proceeding shall be held in strict confidence.

Arbitration Forums’ success and its members’ confidence depend on application of the proper law. Article Third, subsection (a) asserts Arbitration Forums’ requirement that panel members base their decisions on the applicable local jurisdictional law.

Arbitrators must consider the written rules, regulations, and statutes established by legislative bodies and previous court decisions within their jurisdiction. A company can also use all of the defenses that are available in a court of law including an affirmative defense. If the courts in a particular jurisdiction recognize the validity of a particular affirmative defense, then the arbitration panel should also consider the defense. A panel must place the same emphasis on evaluating a defense plead in arbitration as if it had been raised in litigation.

Because parties enter into arbitration in dispute, there will be times when claim representatives will not want to accept a panel’s decision. However, Article Third subsection (b) addresses specifically that most decisions are final and binding without the right of rehearing or appeal, except in the case of clerical or jurisdictional error.

A correction only applies if AF or a panel member makes the clerical or jurisdictional error. If a disputing party makes a clerical error, it has no recourse for correcting the error after the hearing. Before the hearing, a party can amend its application or answer.

The purpose of Article Third, subsection (c) is to inform the members about the limitations associated with using an arbitration decision to determine the outcome of other proceedings related to the same event. For that reason, AF declares that its decisions are neither res judicata nor collateral estoppel to other claims or suits arising from the same accident, occurrence, or event. However, the decision is res judicata to the sole issue of supplemental damages related directly to the original award if the Applicant follows the guidelines in Rule 5-3. Otherwise, a party cannot use the decision in any other proceeding.

The last sentence in Article Third stresses the importance of confidentiality in arbitration proceedings. AF, the arbitrator, and all participants must treat all matters connected to arbitration proceedings with strict confidence.
Chapter Seven
Article Fourth
Non-Compulsory Provisions

KEY POINTS

This chapter discusses:

a) Issues that may be arbitrated with written consent

b) Effects of providing written consent

Article Fourth
Non-Compulsory Provisions

The parties may, with written consent, submit a claim:

a) that exceeds this forum’s monetary limit, or

b) where a non-signatory wants to participate

Once a company gives written consent, all Articles and Rules of this forum are applicable, and the company may not revoke its consent.

Article Fourth is the “arbitrate with consent” article. It lists situations that do not meet the criteria for compulsory arbitration but which parties may want to arbitrate voluntarily. All disputing parties must provide their consent to arbitrate in writing.

The first reason parties may consent to arbitrate under Article Fourth is to resolve a dispute that exceeds the $100,000 monetary limit. With all parties’ consent, the panel can arbitrate claims that exceed the monetary limit.

Article Fourth (b) allows a non-signatory to consent to participate in a specific Automobile Arbitration case with the consent of all signatory parties involved in the dispute as well as the non-signatory party. The requirement that all parties consent in writing prevents nonmembers from “picking and choosing” which cases to submit to arbitration. Because of the compulsory provisions of the Agreement, signatories do not have the opportunity to select cases.
In either of these situations, each company must consent in writing, and such written consent should be included with the S-Form when it is filed. This confirms the company did not file in Auto Arbitration by mistake. AF prefers that the non-signatory use its company letterhead to give its written consent. This is particularly important when the non-signatory is a commercial insured who wants to submit its liability deductible/retention to arbitration.

It is very important to note the last sentence of Article Fourth. Once a company agrees to arbitrate the specific claim, it cannot withdraw its consent. It must participate in the arbitration process and abide by all of the Forum’s Articles and Rules.
CHAPTER 8
Article Fifth
Arbitration Forums Inc.’s Authority

KEY POINTS

This chapter discusses AF’s authority, including:

a) Making Rules and Regulation
b) Selecting hearing locations
c) Arbitrator’s selection criteria
d) Establishing filing fees
e) Membership classes
f) Exculpatory clause

Article Fifth

AF, representing the signatory companies, is authorized to:

a) make appropriate Rules and Regulations for the presentation and determination of controversies under this Agreement;

b) determine the location, and the means by which arbitration cases are heard;

c) determine qualification criteria and provide for the selection and appointment of arbitrators;

d) establish fees;

e) invite other insurance carriers, noninsurers, and/or self-insureds to participate in this arbitration program, and compel the withdrawal of any signatory for failure to conform to the Agreement or the Rules issued thereunder.
The signatories, directors, officers, staff, agents, and AF employees, as well as the arbitrators, are not liable to and will be held harmless by any party(ies) for any negligence, act, or omission concerning the processing, administration, or hearing of any arbitration conducted under this Agreement.

Article Fifth empowers Arbitration Forums with the authority to administer the Auto Arbitration program. All of AF’s arbitration agreements contain a similar article. The Board of Directors, representing AF’s members, delegate this required authority and power to Arbitration Forums.

Article Fifth (a) permits AF to make the appropriate rules and regulations to perform its duties to resolve disputes among members. To that end, AF recently initiated an effort to simplify, standardize, and streamline its arbitration process wherever and whenever possible. Periodically, based on member feedback, AF updates the rules to reduce ambiguity and simplify the language.

Article Fifth (b) permits AF to select the location of its offices and places to conduct the arbitration hearings. AF’s marketing and operations staffs are constantly evaluating and striving to satisfy members’ needs. As part of this evaluation process, AF considers the number of filings from a particular area and availability of certified arbitrators.

Subsection (c) of Article Fifth gives AF the right to determine qualification for selection and appointment of arbitrators. Each member company identifies and provides highly qualified individuals to serve as arbitrators. Currently, the Auto Arbitration arbitrator must have at least five (5) years of claims experience and obtain his or her supervisor’s approval to volunteer and attend hearings.

Article Fifth, subsection (d) provides AF with the authority to establish the arbitration filing fees. The purpose for AF’s filing fee is to cover the cost of providing arbitration services from filing to resolution of the dispute. All revenues are expended in providing the best possible service to its members. AF is a not-for-profit organization. Its Board of Directors, consisting primarily of senior claim executives from AF’s member companies, must approve any change in the filing fee.

Article Fifth (e) provides authority to encourage membership and participation of property and casualty insurance companies, self-insureds, and commercial insureds with large retentions or large liability deductibles. There are no initiation dues or membership fees connected with becoming a member of the Forum. This subsection also authorizes AF to force a member to withdraw from the Forum if the member fails to follow the Auto Arbitration Agreement or comply with the Rules and Regulations.

The last paragraph of Article Fifth contains the exculpatory clause for Arbitration Forums, which protects the named parties from liability on grounds of negligence, act, or omission.
CHAPTER 9
Article Sixth
Withdrawals

KEY POINTS
This chapter states the procedure that a signatory company must use to withdraw from the Automobile Subrogation Arbitration Agreement.

Article Sixth

Any signatory company may withdraw from this Agreement by notice in writing to AF. Such withdrawal will become effective sixty (60) days after receipt of such notice except as to cases then pending before arbitration panels. The effective date of withdrawal as to such pending cases shall be upon final compliance with the finding of the arbitration panel on those cases.

Article Sixth demonstrates how simple it is to withdraw from an arbitration program. All AF requires is notice in writing from an individual in a senior level position who has the authority to make nationwide contract decisions on behalf of his or her company.

The withdrawal is effective 60 days after AF receives the notice of withdrawal, except for any case pending arbitration.

A withdrawing company should not file for arbitration during this 60-day waiting period unless it is willing to have the panel hear the case. All cases filed by or against the withdrawing member during the 60-day waiting period are still subject to the provisions of the program and the member must honor all awards. Once AF settles the last pending case and the parties comply with the decision and award, the withdrawal becomes effective.

A company cannot withdraw its membership to prevent an arbitrator from hearing a case. The member must request withdrawal in writing, and the arbitrator(s) must hear all pending cases.

Normally withdrawal is not a result of dissatisfaction, but is due to the member company changing its policy. For example, a member company may merge with a nonmember or change its lines of coverage. Although not mandatory, AF prefers to know the reason for withdrawal. AF can use this information to take remedial actions and/or improve the program for the remaining members if needed.
Chapter 10
Preamble
Introduction and Condition Precedent

KEY POINTS

This chapter covers the:

a) *A-Form entry requirements for satisfying Automobile Arbitration’s condition precedent.*

b) *Action AF may take if the companies have not satisfied the condition precedent*

c) *Significance of the “bilateral obligation” in satisfying the Automobile Arbitration condition precedent*

Preamble

AF created the following Rules and Regulations under the authority of Article Fifth (a) of the Automobile Subrogation Arbitration Agreement (referred to as the “Agreement” in the rules). The company, known as “signatory” in the rules, signs the Agreement with AF. As a condition precedent to using these Rules and Regulations, the parties should attempt to settle the subject dispute prior to filing arbitration. The filing company, at a minimum, must list the correct and current representative’s name and address, insured name, and claim file number for the adverse party(ies). Failure to list current and correct information may cause the decision to be voided.

The Automobile Subrogation Arbitration Agreement, shortened to *Agreement* in the Preamble, is a legal, contractual statement among signatories. The Agreement’s Article Fifth (a) authorizes AF to make the Rules and Regulations. The Rules and Regulations are established, approved, mandated standards and guidelines for the presentation and resolution of disputes. They cover from the condition precedent to final disposition of the file materials.

An authorized individual from an eligible company simply signs and dates the applicable Agreement and sends it to Arbitration Forums, Incorporated. Based on the Agreement signing process, AF refers to the company as a *signatory.*
The Preamble emphasizes Auto Arbitration’s *condition precedent*. The *condition precedent* is an act that must take place before proceeding with arbitration and using the applicable rules. As in all programs, AF wants the parties to attempt to resolve their particular dispute(s) prior to filing arbitration. If the adverse parties cannot resolve their dispute, AF’s minimum requirement is for the **Applicant** to obtain the correct and current representative’s name and address, insured’s name and claim file number for all adverse parties. Once the **Applicant** has obtained the correct information, it has met the condition precedent and may file arbitration.

If the Respondent’s name, representative, address, insured, or file number is missing or incorrect, AF may withdraw the case, and it will not go forward to hearing. AF cannot administratively process a case if there is insufficient information to send a **Notice of Hearing**. The condition precedent is a bilateral obligation. If the filing form is the Respondent’s first notice of the **Applicant**’s demand, then the Respondent should contact the **Applicant**’s representative and attempt to satisfy the demand. If the parties fail to settle the dispute, the Respondent should answer the **Applicant**’s filing, and must file a response at least 10 business days before the hearing date. The Respondent should also add or correct any missing or erroneous entries when filing an answer.

By satisfying the condition precedent, the parties can now begin applying and complying with the program’s Rules and Regulations. The following chapters will describe this process.
CHAPTER 11
Rule 1-1
Geographic Jurisdiction

KEY POINTS

This chapter describes AF’s geographic boundaries for compulsory Automobile Subrogation Arbitration.

Rule 1-1

The Agreement between signatory companies and AF limits jurisdiction to accidents, occurrences, or events occurring within the United States, Puerto Rico, and the U.S. Virgin Islands.

The purpose of Rule 1-1 is to establish the geographic boundaries for compulsory arbitration. AF’s current jurisdiction is the entire United States, Puerto Rico, and the United States Virgin Islands. Unless a local law restricts hearing a case that falls within an Automobile Subrogation Arbitration compulsory provision, AF has the power and right to apply and enforce the Automobile Subrogation Arbitration Agreement and Rules within these boundaries.

Although AF attempts to hear cases where the incident occurred, jurisdiction can change to another state. For example, Florida arbitrators hear cases from Puerto Rico and the Virgin Islands. We currently do not have hearing facilities outside the 50 states. If all involved parties agree, the case can be heard at any hearing location. Regardless of where arbitrators hear the cases, they must apply the correct local law.
KEY POINTS

This chapter discusses the:

a) Requirement to remove a case from litigation that is within the Automobile Subrogation Arbitration Forum’s jurisdiction.

b) Timeframe for protecting against the expiration of a statute of limitations tolled by litigation.

Rule 1-2

Rule 1-2 informs all parties of the requirements associated with removing a case from litigation that belongs in compulsory arbitration.

An Applicant must make every effort to determine if the controverting party is a member of the Auto Forum. If the Applicant starts legal proceedings and then receives notice that the other party is a signatory (member) to the Agreement, the Applicant must withdraw the case from litigation.

The Applicant may file in arbitration any time prior to the running of the statute of limitations. However, if the applicable statute of limitations lapsed while the case is in litigation and the suit was dismissed because arbitration has jurisdiction, the Applicant has 60 days to file arbitration to protect against a defense based on the statutes expiration. The Respondent can raise a valid defense if the Applicant does not file within 60 days from suit dismissal.
CHAPTER 13
Rule 1-3
Monetary Limit

KEY POINTS
This chapter discusses:

a) Company Claim Amount limit

b) Counterclaim and limit

c) Companion claims and limit

d) Legal fees and limit

e) Deductible and limit

Rule 1-3

Compulsory arbitration is applicable to a maximum of $100,000 per claim:

(a) AF considers a claim and Counterclaim as two 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 the monetary limit.

The purpose of Rule 1-3 is to specify and clarify Auto Arbitration’s monetary limitation. Specifically, it addresses how the $100,000 monetary limit relates to claims, a claim with a counterclaim or companion claim for different lines of coverage, and legal fees arising from the same accident, occurrence, or event.

Any company claim amount of $100,000 or less is within the monetary limit for compulsory arbitration. However, each AF arbitration agreement allows participants to waive the monetary limit. The Automobile Agreement’s Article Fourth allows the claim amount to exceed $100,000 with written consent. It
is also permissible for the Applicant to reduce its company claim amount so that it does not exceed $100,000.

The $100,000 limit applies on a per claim basis rather than an aggregate of all claims arising out of the same accident, occurrence, or offense. In other words, there can be a company claim amount of $100,000 or less on several claims arising from the same occurrence, and each would be subject to compulsory Auto Arbitration. The program monetary limit applies separately to each claim.

The first situation referred to in Rule 1-3 is the claim and counterclaim. The total amount of a case with a counterclaim can exceed $100,000; since neither the original Applicant’s nor the Counter-Applicant’s individual claims exceed $100,000. For example, an Applicant shows their amount of damages is $55,000 on the original application. Company 2’s counterclaim shows the amount of damages for their insured is $47,000. Both parties’ total damages are $102,000. However, AF considers the claim and counterclaim as two separate claims each having their own $100,000 limit.

The second condition in Rule 1-3 is the claim and companion claim under different lines of coverage. A claim and companion claim are similar to the claim and counterclaim situation. As with the claim and counterclaim, AF considers a claim and companion claim as two separate claims. Therefore, any one claim arising from the same accident or incident cannot exceed the monetary limit of its forum, but the claims’ total can amount to more than the limit. For example, there could be a $50,000 Automobile Subrogation claim in the Auto Forum and a $150,000 Special Arbitration claim. Although the total against Company 2 equals $200,000, AF would still arbitrate the Automobile Subrogation and Special Arbitration case because the individual claims do not exceed the monetary limit of their respective forums.

An arbitrator can award legal fees in Auto Arbitration. As stated in Rule 1-3 (c), the legal fees should not be included in the $100,000 limit unless the policy limit includes legal fees. As defined, legal fees are attorney fees, court costs, and all other expenses directly related to the prosecution or defense of a lawsuit. An example would be if the Applicant has a company claim amount of $85,000. The Applicant also paid $20,000 in court costs and attorney fees because Company 2 raised an invalid affirmative defense against compulsory arbitration (see Rule 2-9). Even though the company claim amount plus the legal fees equal $105,000 and appear to exceed the $100,000 monetary limit, Auto Arbitration would still be compulsory.

Rule 1-3 (d) clarifies the monetary limit for amount of damages does not include the insured’s deductible. For example, an insured has a deductible of $1,000 and total damages are $101,000. AF will hear the case because it does not include the $1,000 deductible and the remaining $100,000 does not exceed the limit.
CHAPTER 14
Rule 1-4
Nonmember Involvement and Impleading

KEY POINTS
This chapter covers:

a) Defining “Implodeing”

b) Nonmember’s written consent

c) Amended application

Rule 1-4
A respondent may implead additional parties by filing an amended A-Form with AF and other parties in compliance with Rule 2-2 and Rule 2-3.

a) The arbitrator(s) will hear the case and apportion liability and/or damages between all parties.

b) Non-signatories may be impleaded only if they give written consent as per Article Fourth.

c) If negligence of a non-member is argued, the Applicant may:

i. withdraw its application prior to hearing and pursue recovery by other means; or

ii. proceed with arbitration, agreeing to accept an award against any participating company and waive their right to pursue the balance directly against the non-member.

Rule 1-4 provides guidance concerning cases involving additional, unnamed parties in Auto Subrogation Arbitration. The rule permits the Respondent to implead additional Respondents when they submit their response/answer. Impleading is the process whereby a party brings another, previously unnamed party into an action because
they believe that party may be, to some degree, liable for the accident, occurrence, or event.

Upon receiving the Applicant’s A-Form and Contentions Sheet, the Respondent should decide if the Applicant named all of the possible tort feasors (or wrong-doers) or if the contentions adequately describe all participants’ involvement. If the Respondent determines all tort feasors were not named, he or she must determine if the insurer of the unnamed party is a signatory to the Automobile Subrogation Arbitration Agreement. If the unnamed party is a signatory to the Automobile Agreement, the Respondent must implead the party by adding them as the Respondent on the A-Form.

The Respondent has two alternatives if the insurer of the unnamed party is not signatory to the Agreement. First, the Respondent may secure the nonsignatory company’s written consent to participate in the arbitration as described in Chapter 7 - Article Fourth, Non-compulsory Provisions. The Respondent would then add the nonsignatory as the Respondent on the A-form. This allows all parties to be involved in the arbitration and for liability to be fully apportioned. Second, the Respondent may simply argue the respective negligence/liability of the unnamed party in their contentions. In this case, the arbitrator(s) will determine the percentage of liability, if any, for each named party based on the facts. The named Respondent(s) will only pay the percentage of the award amount, if any, based upon the liability finding against its insured. This second alternative would also apply to an uninsured party, an unknown party, such as a phantom vehicle, or a party that cannot be brought into litigation. The Respondent would argue the alleged negligence of the unnamed party and the arbitrator(s) would apportion liability.

Since the impleading of an unnamed, nonsignatory party (i.e. uninsured driver) party might be a surprise to the Applicant that would limit their recovery, the Applicant would then have two options if the Respondent impleads a nonsignatory. First, the Applicant can simply allow the hearing to proceed. By doing so, the Applicant agrees to accept any award against the participating Respondent(s) and waives its right to bring any subsequent action against the nonsignatory. As a second option, the Applicant can withdraw its filing and if so desires, it can seek recovery from all parties in another venue, such as litigation.
KEY POINTS

This chapter covers:

a) Limitations on the hearing compulsory claims from other forums by an Automobile Arbitration panel

b) Process for filing companion claims in Automobile Arbitration

Rule 1-5

When filed as a companion to Special and/or Personal Injury Protection (PIP), the Special and PIP rules regarding arbitrators will prevail.

The purpose of Rule 1-5 is to clarify the selection of arbitrators if a Automobile Subrogation Arbitration claim is filed as a companion claim with a Special or Personal Injury Protection (PIP) claim. Each of these programs has different monetary criteria for determining the number of arbitrators.

AF recognizes, in most instances, the disputing parties will want companion claims heard together. This ensures consistent decisions, because the same arbitrator(s) views the same facts and evidence from a perspective of all issues. In order for that to occur, a company must follow the procedures in Rule 2-7 (see Chapter 22).

When a party files a companion case from Automobile or another AF program with a Special or PIP Arbitration case, the rules governing the Special or PIP case will have jurisdiction over all of the cases. This includes arbitrator assignment as well as the number of arbitrators who will hear the case.
CHAPTER 16
Rule 2-1
Improper Litigation

KEY POINTS

This chapter includes:

a) Identification of signatories in the dispute
b) Suit dismissal requirements
c) Court costs and attorney fees

Rule 2-1

Any signatory making a claim, or having a claim made against it, shall identify itself as a signatory to the Automobile Arbitration Agreement and inform all interested parties.

Use of Rule 2-1 precludes unnecessary delays in the arbitration process. Everyone involved in a case subject to compulsory arbitration should promptly identify itself as a signatory company to all interested parties. Compliance with this rule reduces unnecessary legal expenses for members. All participating parties should take the necessary time to find out if the other parties are members. This practice saves money and speeds up the process.

Once the Applicant identifies the parties to a dispute, it should ask each company if it is a member of the Auto Program. It could also check the Directory of AF Locations and Participating Members (published semi-annually) and/or AF’s website (www.arbfile.org) under the Membership Tab.

There will be times, however, when the Applicant will start legal proceedings and then receive notice that the other party is a signatory to the Automobile Agreement. When this occurs, the Applicant has 30 days from the receipt of notice to withdraw from litigation. If the Applicant does not remove the case from litigation within 30 days after receiving notice, the other party may start legal action to have the case removed. The Applicant is responsible for reimbursing the other party for reasonable court costs and attorney’s fees incurred in getting the case out of court and into arbitration. The company lists these costs and fees on the A-Form under the Legal fees section.
CHAPTER 17
Rule 2-2
 Applicant Filing Distribution and 10-Day Rule

KEY POINTS

This chapter covers:

a) How and when Automobile Subrogation Arbitration starts

b) Who receives copies of the A-Form and Contentions Sheet

c) When AF must receive other documentation

Rule 2-2

The Applicant commences an arbitration proceeding by filing a completed A-Form and Contentions Sheet with AF and the representative of each involved party being filed against. Any amendments must be received by AF and any other party(ies) by the close of business prior to ten (10) days before the hearing date.

The Applicant must submit all other documents to AF by the close of business prior to ten (10) business days before the hearing date. Documents not received within this time frame will not be sent to hearing.

Rule 2-2 provides guidelines for initiating the filing process in Auto Arbitration by completing and filing the A-Form and Contentions Sheet. It specifies the Applicant should provide a copy of the A-Form and Contentions Sheet to each involved party so it can take the required action.

The Applicant must produce sufficient copies of the A-Form and the Contentions Sheet for AF, each party filed against and for its own records. The filing process does not require the Applicant to provide copies of evidence to the opposing party with the exception of product liability claims (see Chapter 2-12). However, the Applicant must send its file material with its Contentions Sheet to the proper AF
office handling the case by the close of business no less than 10 business days before the hearing date for the arbitrator to consider the material at the hearing.

Upon receipt of the A-Form and Contentions Sheet, AF establishes a case file and enters the information into the case tracking system. The system assigns a docket number and begins the scheduling process for the hearing and for receipt of the Respondent’s answer. On the hearing date, the file with file material received within the prescribed time limits goes to the panel for review and decision.
CHAPTER 18
Rule 2-3
Respondent Filing, Distribution
and 10-day Rule

KEY POINTS

This chapter states the requirements for the Respondent to answer an Automobile Subrogation Arbitration filing properly.

Rule 2-3

The Respondent answers by filing its copy of the A-Form and Contentions Sheet with AF and all other involved parties by the close of business prior to ten (10) business days before the hearing date. Any amendments must be received by AF and any other parties by the close of business prior to ten (10) days before the hearing date.

The Respondent must check the box on the A-Form clearly showing a Counterclaim is being filed. Unless a Counterclaim is filed and heard with the original arbitration case, the Respondent company with the Counterclaim is precluded from pursuing its Counterclaim against the adverse member company, unless it can show through documentary evidence that its claim was created by payment to its insured less than ten (10) business days prior to the hearing date or anytime thereafter. Filing a Counterclaim is the only way the Respondent may collect its damages.

The Respondent must submit all other documents to AF by the close of business prior to ten (10) business days before the hearing date. Documents not received within the above time frame will not be sent to hearing.

Personal representation will not be allowed in cases when an answer has not been filed as outlined above.

If one of the involved parties questions compliance, the burden of proving delivery is upon that party.
Rule 2-3 provides The Respondent with response instructions and time limits for replying to the Applicant’s filing. AF imposes the time limit to provide all parties with sufficient time to prepare for the hearing.

To reply to a filing in Auto, the Respondent must complete its section on the A-Form received from the Applicant. AF must receive the reply and all supporting documents by the close of business no less than 10 full business days before the hearing in order to provide all Auto Arbitration participants with sufficient time to analyze each opposing company’s position.

The Respondent sends its reply on the original A-Form with its own Contentions Sheet to AF, to the Applicant, and to all other companies named on the A-Form. When selecting a delivery method, especially if the end of the time limit is close, the company should consider that it will have the burden of proving delivery through a third party should any party question its meeting the time requirement.

If the Respondent receives the Applicant’s P-Form but believes the Applicant’s insured is at fault or at least partially at fault, it may file a counterclaim to recover damages to its insured. The only restriction on the Respondent’s filing is they must clearly identify the counterclaim by checking the box on the P-Form. They also must file the counterclaim in time for the panel to hear it with the original claim.

The only exception to the requirement of filing the counterclaim together with the Applicant’s original claim is if the Respondent can prove that it paid its insured less than ten business days before the hearing date or anytime thereafter. It can even be after the original hearing date. If it were more than five business days before the hearing, the Respondent must file the counterclaim along with the original claim.

AF will not permit a personal appearance instead of an answer. Personal representation is when a company representative decides to present the case in person and/or bring a witness(es) to the hearing. This part of rule 2-3 prevents a party from bringing up matters at the hearing that were not contained on the Contentions Sheet.
CHAPTER 19
Rule 2-4
Legal Fees

KEY POINTS

This chapter discusses the:

a) Importance of making an accurate entry

b) Purpose of the Legal Fees section

c) Relationship of this amount to the award.

Rule 2-4
Legal Fees

If seeking legal fees, a company must list these amounts on the A-Form.

Rule 2-4 addresses the Legal Fees section of the A-Form and the need to enter an amount in this section. This dollar amount is critical for the arbitrator(s) to render a correct Auto Arbitration award. A company must list the legal fees amount on the A-Form if it is seeking to recover legal fees. If this entry is left blank, legal fees will not be part of the award, if any.

In the Legal Fees section, you enter the amount paid to an attorney for service performed or court costs expended in having a case removed from litigation or resulting from an improper objection to jurisdiction as related to Rules 2-1 or 2-9. Such fees must be “reasonable.”

Company Claim Amount plus the Legal Fees represent the maximum amount a company will receive from a favorable award.
CHAPTER 20
Rule 2-5
Affirmative defense/Pleading Requirements

KEY POINTS
This chapter discusses:

a) The Contentions Sheet
b) Affirmative defense
c) Affirmative Pleading
d) Grounds for Defense/Pleading
e) Affirmative defense hearing process

Rule 2-5

The parties must raise and support affirmative pleadings or defenses in the Affirmative Defenses/Pleadings section of the Contentions Sheet. If a denial of coverage is being plead, a copy of the denial letter, to the insured, must be provided.

The Contentions Sheet is a mandatory document containing key information about the filing as well as a listing of evidence included in the arbitration file. One of the main entries on the Contentions Sheet is the Affirmative defenses/Pleadings section. Rule 2-5 states that this section must be utilized when a party wishes to bring an affirmative defense or pleading to the attention of the arbitration panel.

An affirmative defense is any issue that does not address the dispute itself but rather raises other issues that may be impediments to the arbitrator’s right to consider the dispute itself. Affirmative defenses may legal bars to a right of recovery (like a statute of limitations) and are many times identified in the exclusions in the Agreement or other specific rules like 2‑12 in Auto or 2‑13 in Property and Special.

Affirmative pleadings include issues or legal doctrines that reinforce the filing company’s position (like bailment or res ipsa loquitur). Affirmative pleadings are often used to proactively refute an anticipated Affirmative Defense.

An affirmative defense or pleading is valid only if a party properly raises and supports it. An arbitrator cannot raise these issues for a party.
In addition to specifying how an affirmative defense must be raised on the Contentions Sheet, Rule 2-5 specifies what evidence must be provided if denial of coverage is raised as an Affirmative Defense. The evidence is a copy of the denial letter to the insured.

First, let’s look at to whom the denial letter should be addressed. The rule says the denial letter is “to the insured,” not “to the named insured.” This is significant because the named insured is not the only entity who may be looking for coverage under a policy and for whom coverage is being denied. For instance, in the case of a non-permissive driver, the driver is a potential “insured” under the policy and it is coverage for his liability that is being denied. The named insured in most situations is still fully covered so a letter to him is information about a denial of coverage - it is not the actual denial. It is the non-permissive driver who has personal liability in the absence of coverage and it is he to whom coverage must be denied. In short, the denial of coverage letter must be addressed to the “insured” for whom coverage is actually denied, not the named insured whose coverage is still available. The named insured may well be interested in the information, but is not directly affected because his coverage is usually in tact.

Please note also that since the denial letter should be addressed to the individual or entity for whom coverage is denied, indication that that entity was only copied in on a letter addressed to the named insured or someone else regarding the denial is not sufficient for purposes of this rule.

In some situations there could be allegations in the contentions against both a driver and the named insured, like for leaving his keys in the car or elsewhere a non-permissive user had easy access to them. In that instance, even if coverage is denied for the driver’s negligent driving, there may well be coverage for the named insured’s alleged negligent act and the Affirmative Defense would not be granted to withdraw the case. The case would be heard but ONLY for the alleged negligence of the named insured, i.e. the party for which coverage has NOT been denied.

The second issue concerns when a denial of coverage letter is needed. The answer is basically any time it is possible to send it. Obviously if the non-permissive user is unidentified, as in the instance of a stolen vehicle, a letter can not be sent to him. Likewise if no policy exists for the alleged insured, and the insurer has no information about him, a letter can not be sent. In most other situations, as long as the entity for whom coverage is being denied is identified, a copy of the denial letter to him should be provided. If no denial of coverage letter has been sent to the insured, the Respondent should proactively address the lack of same for the arbitrator to consider as part of the affirmative defense.

Raising an affirmative defense does not mean that such defense is necessarily valid. The party must also explain the grounds for the pleading or defense. As a precaution, a party should also complete the entire Auto-Form and Contentions Sheet even when raising an affirmative defense or pleading. Should the arbitrator(s) deny the defense, the hearing will continue, and the case will be decided as submitted.

According to rule 2-5, and reinforced by rule 3-5 (a), the arbitrator will consider only affirmative defenses included in the Affirmative defense/Pleading section of the Contentions Sheet. If the panel discovers an affirmative defense somewhere other than this section, they will inform the party in the Explanation of Decision of its failure to submit the defense in accordance with Rule 2-5.
CHAPTER 21
Rule 2-6
Contesting Damages

KEY POINTS

This chapter includes:

a) The purpose of the Contentions Sheet’s Itemization of Damages/Settlement section

b) How a party contests damages

c) The process for settlement without the other party’s consent

Rule 2-6

If a party (ies) contests damages, it must present its arguments on the Contentions Sheet and provide its damages amount under the Itemization of Damages section of the Contentions Sheet. If this section is left blank, damages are not at issue.

The purpose of the Itemization of Damages/Settlement section on the Contentions Sheet is to help the arbitrator verify the elements included in the claim at issue. If the Respondent has the right to contest the Company Claim Amount entered on the A-Form. If the Applicant anticipates the Respondent will question the claim amount, it should complete this section of the Contentions Sheet.

If the Respondent contests the claim amount, it must show the items and arithmetic used to determine the amount that it feels the settlement should have been. No entry in the Itemization of Damages/Settlement section means the Respondent is not contesting the damages or claim amount.
CHAPTER 22
Rule 2-7
Companion Claims

KEY POINTS
This chapter explains how arbitrators will hear companion claims under what circumstances.

Rule 2-7

The Automobile Subrogation Arbitration panel will hear all companion claims together, if;

a) filed with the original Automobile Subrogation Arbitration filing; or

b) the related docket number is listed on the A-Form.

It is AF’s intent to hear all related, or companion, claims that arise from the same accident, occurrence, or event at one hearing. This includes companion claims filed in the Automobile forum or any other AF forum. Not only does this ensure the parties have consistent decisions, but it also eliminates the time and cost of having multiple hearings to resolve similar claims.

Rule 2-7 allows an arbitrator to hear companion claims at the same time as the Automobile Subrogation Arbitration case if the company meets certain requirements. An Applicant must file a companion claims with the original Automobile case or specifically list the docket number(s) for the companion claim(s) on the A-Form. These provisions provide the most obvious methods for AF to identify a claim as having companions and the surest way for AF to be able to link the claims for hearing purposes. If a company follows these steps, AF will schedule and hear the companion claims together.

When a party files a companion case from Auto with a Special or PIP Arbitration case, the rules governing the Special or PIP case will control all cases. This includes arbitrator assignment as well as the number of arbitrators who will hear the case (see Chapter 15, Rule 1-5).
CHAPTER 23
Rule 2-8
Dispute Resolution Before Arbitration

KEY POINTS

This chapter covers:

a) Resolving a dispute before arbitration

b) Applicant’s responsibility

c) AF’s responsibility

Rule 2-8

The Applicant must immediately notify AF if it has resolved the disputed issue(s) before the hearing. Upon notification, AF will withdraw the case from arbitration.

Rule 2-8 advises the Applicant to notify AF immediately when the disputed issue(s) has been resolved before the hearing. This prevents wasting resources on hearing a case when the parties have amicably resolved the dispute.

AF cannot withdraw the case from arbitration upon request of the Respondent. We must receive the notice from only the Applicant. Notification may be by letter, fax, or email that identifies the case and indicates that the claim has been settled.
KEY POINTS

This chapter covers recourse when Respondent improperly asserts coverage denial or objection to jurisdiction.

**Rule 2-9**

If the Respondent raises an objection to jurisdiction as a proper **affirmative defense** against compulsory arbitration and the panel or AF withdraws the case from arbitration in response to that pleading, the applicable AF office will remove the case from its active docket.

After removal, if it is discovered that the case was properly placed in arbitration and the **Applicant** refiles the case, the Respondent must reimburse the **Applicant** for all reasonable legal expenses and court costs resulting from the improper objection to jurisdiction.

AF will charge a reinstatement fee.

Rule 2-9 cautions the Respondent about the penalties associated with raising an improper **affirmative defense**. It also gives the **Applicant** recourse when a Respondent raises an invalid coverage denial or objection to jurisdiction.

As an example, when a Respondent asserts “no coverage”, AF accepts this in good faith and closes the case. The **Applicant** is free to pursue the “uninsured” party or another liability carrier, if applicable.

If, through litigation, the court finds that the original filing was proper and that the case was closed in error, the **Applicant** may refile arbitration. In many instances, the **Applicant** may have incurred legal expenses due to the initial removal of the case and is entitled to recover these expenses. The company must list these expenses and show the arithmetic in the **Itemization** section of the Contentions Sheet. This total should match the amount in the **Legal Fees** section of the A-Form.

AF will charge the Respondent a reinstatement fee equal to the filing fee.
CHAPTER 25
Rule 2-10
Reschedule

KEY POINTS

This chapter presents:

a) Reasons for rescheduling a hearing
b) Only one reschedule per party
c) Time limits associated with rescheduling a hearing
d) How to reschedule a case
e) Rescheduling fee for party requesting a hearing reschedule

Rule 2-10

Each party may be granted one reschedule of the hearing date if requested at least three (3) business days prior to the hearing as long as Rule 2-2 or Rule 2-3 has been complied with. AF will notify all parties of the new hearing date and charge the requesting party a fee.

AF recognizes that there are instances where a party requires additional time to prepare and/or submit documents. There are also times when a party introduces some new information in its answer and the opposing party wants to submit a rebuttal. Rule 2-10 addresses these needs. To maintain an expedited process, however, AF will honor only one request per party to reschedule a hearing date. A party must request the reschedule at least three (3) business days prior to the hearing and have complied with Rule 2-2 or 2-3.

The reference to Rules 2-2 and 2-3 is important because it describes the proper process and timeframes to provide supporting documents or respond to a case. If the Applicant has not provided all of its documents or the Respondent does not file its response by the close of business ten (10) days prior to the hearing, it may not use Rule 2-10 to overcome the failure to meet that deadline. However, until the close of business ten (10) days prior to the hearing, any party has one request available to get AF to reschedule the hearing.
Once AF has received the request and changed the hearing date, it will notify all parties of the new hearing date. AF will charge a rescheduling fee to the party who requested the reschedule.
CHAPTER 26
Rule 2-11
Deferment

KEY POINTS
This chapter discusses:

a) How to request a deferment

b) The arbitrator’s(s’) and other involved party’s(ies’) role

c) The process following the deferment of a hearing

d) An objection to jurisdiction and a deferment

Rule 2-11

Any party may request a deferment on the A-Form. AF will charge the requesting party a deferment fee.

Justification for the deferment must be included in the Deferment Justification section of the Contention Sheet. If a deferment is requested, the case will still proceed on the scheduled hearing date to determine the validity of the request. If the request is upheld, the case will be deferred for one year. If the request is denied, the arbitrator will continue to hear the disputed issues.

The party granted the deferment may withdraw the deferment. The case will proceed to the next available hearing.

Any subsequent deferment requests will follow the above procedure.

Rule 2-11 accelerates the dispute resolution process by expediting a case to hearing and precludes any unnecessary postponements. In Automobile Subrogation Arbitration, a deferment is a postponement of a hearing for a one-year period for which AF will charge the requesting party a deferment fee.

A party must request a deferment on the A-Form by checking the Yes box next to I request One Year Deferment. The requesting party must also provide its rationale for the deferment request in the Deferment Justification section of the Contentions Sheet.
The requesting party should base its justification for a deferment on a situation that will, ultimately, have an impact on the arbitration process as it relates to the specific case. For example, the party has a companion claim to the Auto claim in litigation and does not know if the verdict will exhaust the policy limits. In another example, there is a companion claim in litigation and the litigants are involved in the discovery of evidence. The party requesting the deferment wants to use information from the discovery process to support its arbitration claim.

The requesting party must prove the deferment is necessary, showing that the court case will have an impact on the arbitration filing. This can sometimes be difficult to prove. The presence of a suit does not immediately infer that the panel will gain additional information to guide them when the parties resolve the suit. On the other hand, the arbitration decision will not affect the court decision because the Automobile Subrogation Arbitration Agreement specifically states that arbitration decisions are neither res judicata nor collateral estoppel.

At the hearing, the arbitrator(s) will evaluate the justification for the deferment request. The panel will also consider objections to the delay of the arbitration from the other involved parties, if raised. If the arbitrator(s) upholds the deferment request and concludes the deferment is for good cause, AF will retain the case in a deferred status for a one-year period from the original filing date.

If an arbitrator determines that the reason for deferment is not valid, the hearing continues. The arbitrator will hear the case immediately and decide the issues of liability and/or damages. Therefore, all parties must provide all file materials as the case can immediately go to hearing on the original disputed issues.

If the party requesting the deferment no longer requires the deferment during the year, it must notify AF and the opposing party in writing that the case is ready for hearing. AF will then schedule the case for hearing. AF sends all involved parties a Notice of Hearing each year telling them that it is scheduling the case for hearing. If AF defers the case, a party can submit another request for deferment each year until the companion claims are settled. If a party remains silent upon receiving a Notice of Hearing, AF considers this as a deferment waiver. The panel will hear the case on the scheduled date. A party pays a deferment fee each time it requests a deferment.

A Respondent has an obligation to raise any objections to jurisdiction in its answer even if it or another company has requested a deferment. This prevents delaying the Applicant from seeking other means for recovery if a valid objection to jurisdiction exists. The Respondent must file the objection in the Affirmative defense/Pleading section on the Contentions Sheet. When a company raises a jurisdictional issue, the arbitrator will consider the jurisdictional question first. If the arbitrator determines AF has jurisdiction, he or she will then consider the deferment request. If the arbitrator upholds the affirmative defense and decides AF does not have jurisdiction, it will withdraw the case. AF cannot defer a case over which it has no jurisdiction.
CHAPTER 27
Rule 2-12
Product Liability Evidence

KEY POINTS

This chapter covers:

a) Product Liability evidence inspection process.

b) The possible consequences of noncompliance.

Rule 2-12

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 critical to defense of the claim.

A purpose of Auto Subrogation Arbitration is to provide a fair and neutral means for resolution of disputes between/among signatory companies. This rule assures that the Respondent has been given a reasonable opportunity to inspect the allegedly defective product in order to prepare its defense.

Reasonable accommodations must be made by both the Applicant and the Respondent. It is not always the requirement that the Respondent has to go to the alleged defective product. In certain situations, it may be more reasonable for the Applicant to send the product to the Respondent.

If the Respondent has requested, but has not been given a reasonable opportunity when such inspection is critical to its defense of the allegations made against its insured, it would be unfair for the arbitrator(s) to proceed with only the Applicant’s description of the defective product to consider. However, if “reasonable accommodations” have been made for the Respondent to inspect the product and they chose not to do so, the rule will not protect the Respondent and will not prevent the case from being arbitrated.
CHAPTER 28

Rule 3-1

Notice of Hearing

KEY POINTS

This chapter covers:

a) Notification of Hearing process

b) The requirements for AF to send a Notice of Hearing

Rule 3-1

AF will transmit or mail Hearing Notices to all parties at least 30 days prior to the initial hearing date unless waived.

Rule 3-1 establishes procedures for making all disputing companies aware that Arbitration Forums has scheduled the dispute for hearing. The Notice of Hearing tells the involved companies when and where the hearing will take place as well as when all documents must be received (Rule 2-2 and 2-3).

To perform the task described in Rule 3-1 AF relies completely on the accuracy of the information provided by the Applicant on the A-Form in compliance with Rule 2-2 (Chapter 17) and the condition precedent described in the Preamble (Chapter 10) to obtain the names and addresses for sending the Notices of Hearing. For this reason, if the post office returns a Respondent’s Notice of Hearing as being undeliverable, AF will withdraw the case as the parties did not satisfy the condition precedent. Arbitration may be refilled using correct/current address information for the Respondent.

The Notice of Hearing provides a level of protection for the Respondent. It provides notification that the Applicant has filed arbitration, and that AF has scheduled the case for hearing. A Respondent should immediately verify that it has a copy of the Applicant’s A-Form and Contentions Sheet and verify there is coverage. A Respondent should make sure that it answers or has addressed the issues presented in the original filing and attach the necessary file material if necessary. If it has not received the A-Form and Contentions Sheet, the Respondent should promptly contact the Applicant and request the documents.
CHAPTER 29
Rule 3-2
Failure to Answer

KEY POINTS

This chapter covers:

a) The 10-day rule (Rule 2-3)

b) No answer from Respondent

c) Applicant’s responsibility

Rule 3-2

The arbitrator(s) will hear the case even if a Respondent fails to answer.

Rule 3-2 clarifies and strengthens the time restrictions imposed on the Respondent’s by specifying that Respondent’s failure to respond to a filing in a timely manner will not delay a case from being heard on its scheduled hearing date.

Rule 2-3 (Chapter 18) establishes that the Respondent must file its response by the close of business ten (10) business days prior to the hearing date, and that documents not received within this timeframe will not be made available at the hearing. Per Rule 3-2, the Respondent’s failure to comply will not postpone the hearing of the case either. The arbitrator(s) will decide the case based only on whether the Applicant proved its case with the submitted A-Form, Contentions Sheet, and evidence.
CHAPTER 30
Rule 3-3
Arbitration Panel Size

KEY POINTS

This chapter covers:

a) The process of assigning arbitrators to a case

b) Criteria for the number of arbitrators assigned to each case

Rule 3-2

AF will assign arbitrator(s) based upon the company claim amount using the following criteria:

(a) Under $7,500 – one (1) arbitrator

(b) $7,500 and above – one (1) arbitrator unless three (3) are requested on the A-Form

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

AF uses information provided on the A-Form to determine the type of dispute. AF then assigns arbitrators with the experience and knowledge that matches the Automobile Subrogation Arbitration dispute.

Rule 3-3 establishes the criteria for the size of the Automobile Subrogation Arbitration panel. If the Company Claim Amount is under $7,500, AF will assign one certified arbitrator to hear the dispute. This structure allows AF to resolve the dispute quickly, while freeing up arbitrators to serve on three-person panels and to hear other cases.

A company may request a three-person panel if the Company Claim Amount is $7,500 and above by checking the box next to the statement “I request a three-person panel.” AF charges a fee for a three-person panel because of the additional administrative costs related to the arbitrators scheduling.
CHAPTER 31
Rule 3-4
Adjournments

KEY POINTS

This chapter covers:

a) The basis of adjournment for cause
b) Requesting briefs of law
c) New hearing dates
d) Requested document(s) not received

Rule 3-4

The arbitrator(s) may grant an adjournment for cause or to request briefs of law or clarification of submitted materials. AF will notify all parties of the new hearing date.

If the requested documents are not received prior to the adjourned hearing date, the hearing will proceed.

An adjournment is an interruption of a hearing at the arbitrator’s(s’) discretion for a maximum of 30 days. The determination of “cause” is at the arbitrator’s discretion. For example, an arbitrator might discover that the company submitted a case to the hearing, but it failed to attach the Contentions Sheet or that the sheet was misplaced. In this instance, the arbitrator would not be able to make a determination on the case without this information, so the arbitrator would grant an adjournment. Another example might involve evidence that was listed on the contention sheet but not present at the time of hearing. The arbitrator recognizes that the company intended for this material to be at the hearing and would grant an adjournment to allow the company to provide this missing evidence.

It is highly recommended that a company submit evidence to support all references to local statutes and case law. This will allow the panel to properly review this material and review the actual statute or case law. If a particular statute is cited in the
contentions and the arbitrator(s) needs clarification of the statute, the arbitrator may request an **adjournment**, and AF will **reschedule** the case. This also applies to the clarification of any information included in the case file. For example, an arbitrator is not sure if he understands a critical graph included in an expert witness statement. The arbitrator can adjourn the case and request a more complete explanation of the graph.

Once an arbitrator grants an **adjournment**, AF will notify all parties of the new hearing date. If AF does not receive the requested documents prior to the adjourned hearing date, the case will proceed to hearing, and the arbitrator will render a decision based on the available file material.
CHAPTER 32
Rule 3-5
Requirements for Arbitrator Consideration

KEY POINTS

This chapter details how to submit:

a) An affirmative defense
b) A deferment request
c) Evidence
d) Company Claim Amount and Legal fees Sought
e) A contesting of damages

Rule 3-5

The arbitrator(s) will only consider:

a) Those affirmative defenses or objections to jurisdiction included in the Affirmative Defense/Pleading section of the Contentions Sheet

b) Deferment requests included in the Deferment Justification section of the Contentions Sheet

c) Evidence listed on the Contentions Sheet

d) Amount entered as the Company Claim Amount on the A-Form and/or Legal Fees on the A-Form.

e) Contested damages at issue if specifically plead on the Itemization of Damage section of the Contentions Sheet.
Rule 3-5 informs participating companies about important procedures to ensure the arbitrator considers specific items critical to the outcome of the case, such as affirmative defenses, deferments, evidence, claim amounts, and damages contested. It is the party’s responsibility to bring these items to the arbitrator’s attention if they apply to the case.

Rule 3-5, subparagraph (a) pertains to presenting an affirmative defense. An arbitrator cannot raise an affirmative defense for a company. A company must present the defense in the Affirmative defenses/Pleadings section of the Contentions Sheet. The arbitrators must decide if an affirmative defense or pleading is valid before beginning to decide the liability and/or damages issue(s). It is a good idea for a company to complete the entire Contentions Sheet, including its Contentions and Evidence as though the defense or pleading does not exist. If the arbitrator denies the affirmative defense, the hearing will continue, and the arbitrator will decide the liability and/or damages issue(s).

The second issue an arbitrator addresses is the validity of any deferment requests. As such, the second item for consideration in Rule 3-5 regards presenting a deferment request or challenge to ensure the arbitrator’s consideration. If a company requests a deferment, it must provide rationale for the request in the Deferment Justification section of the Contentions Sheet. The same applies to any involved company that wants to object to a deferment request. The company with the objection must also include its rationale in the Deferment Justification section.

Rule 3-5, subparagraph (c) advises each disputing party that it must list its evidence in the Contentions Sheet’s Evidence section for an arbitrator to consider it. Even if a case is to be represented in person, the party must still list its evidence. The Auto Arbitration Agreement and Rules do not mandate a discovery process for evidence. The evidence listed on the Contentions Sheet is the only way for each company to know what another company is presenting to the arbitrator. The arbitrator(s) matches the evidence list with the attachments, and also verifies that the evidence supports the allegations and/or defenses. The arbitrator(s) will not consider unrelated evidence that does not support the contentions or new evidence a company does not list on the Contentions Sheet. The arbitrator will not consider evidence if it is not listed. This helps to guard against “surprise” evidence influencing the arbitrator(s).

Subparagraph (d) warns that the arbitrator will only consider the amounts listed in the Company Claim Amount and Legal Fees sections of the A-Form. These two entries are critical for the arbitrator to render an accurate Auto Arbitration award. There will not be any award if these entries are left blank. These amounts are the basis for the arbitrator’s(s’) award computation. The Company Claim Amount and/or Legal Fees amount takes precedence over the Itemization of Damages amount if there is a conflict between the entries.

Rule 3-5, subparagraph (e) provides the requirements for having an arbitrator consider the amount of contested damages. A Respondent must contest the damages on the Itemization of Damages section of the Contentions Sheet.

The Respondent may disagree with the Applicant’s appraisal as to the amount of damages used to determine the Company Claim Amount and can make the amount of damages an issue. The Respondent must make the arbitrator aware of the damages issue in its contentions and
provide an itemization of the damages with supporting evidence. The Applicant will refute this amount by offering its own explanation and itemization with evidence. The arbitrators are not to assume or add anything but, instead, only focus on the information contained in the Itemization of Damages/Settlement section and the supporting evidence.
CHAPTER 33
Rule 3-6
Hearing Informality

KEY POINTS

This chapter covers:

a) Hearing vs. Court

b) Rules of Evidence

Rule 3-6

Procedure at arbitration hearings is informal. Formal rules of evidence do not apply.

Rule 3-6 establishes that the arbitration hearing is an informal process, and that the Auto arbitrator(s) does not adhere to strict rules of evidence. An Auto Arbitrator accepts and evaluates the applicability and credibility of any and all evidence submitted by the parties.

AF members have agreed to forego the rigid atmosphere of propriety and the time-consuming rules that govern a court proceeding, including rules of evidence, to achieve the advantages of expediency and cost-effectiveness. Rules of evidence are a series of rules created by the courts to ensure that any evidence presented in court is fair and reliable. These rules determine whether the court will admit and consider evidence. Since these rules are not applied in the arbitration hearing, companies may present their positions without concern about whether their evidence would be admissible in a formal court proceeding.
CHAPTER 34
Rule 3-7
Hearing Attendance

KEY POINTS

This chapter covers:

a) Requesting to attend the hearing

b) Determining the need for appearance and/or witnesses

c) Restrictions on insured and witnesses

d) Parties cannot be present during deliberation

Rule 3-7

A party may present witnesses or attend an arbitration hearing. To do so, the party must indicate their intent on the original or an amended A-Form.

Insureds or witnesses may not appear without the presence of a company representative. If company representatives attend an arbitration hearing, they must withdraw after presentation of the case. Representatives may not be present while the arbitration panel is deliberating.

Rule 3-7 establishes that a representative may attend the arbitration hearing and, if necessary, present witnesses. If a representative plans to attend a hearing, he or she must check the box on the A-Form that indicates This file will be represented in person. Representatives can do this on the original or an amended A-Form if they make this decision after filing the original A-Form. AF and all other parties must receive the A-Form noting that a company will make a personal appearance no later than ten business days prior to hearing (Rule 2-2 and 2-3). Checking the appropriate box informs the other party(ies) and AF of the intention to appear. This gives the opposing party an opportunity to appropriately adjust its strategy and minimize any element of surprise.
If the insured or a witness or expert is to also appear, their recorded or written statement or report must be listed under the Evidence section on the Contentions Sheet and their appearance noted. For example: Evidence Item #1. Witness Statement - John Doe (also to appear at hearing). You can also note their appearance under the Administrative Request section on the Contentions Sheet. In short, the insured’s or witnesses appearance at the hearing should not be a surprise to the adverse party(ies).

A witness is normally a disinterested person who was present and saw the accident, occurrence, or offense or an insured who was directly involved. The witness can also be an expert who has superior knowledge about a specific subject area. Often, a representative or witness can provide a documented statement (paper file) that will be as effective as a personal appearance. Most arbitration cases are heard with documents only. To control claim costs, participants should confine personal representation and witnesses to very complex cases where the panel benefits from their presence.

Rule 3-7 states that an insured or a witness may not appear without the presence of a company representative. The purpose of this restriction is to minimize the potential for disruption at hearing. In most cases, the company’s representative is the one named on the A-Form. Even if noted on the A-Form, any person attending a hearing must be a representative, or be accompanied by a representative, of the company in question.

If any of the involved companies’ representatives attend an arbitration hearing, they must withdraw following the presentation of their case. They will not be present while the arbitration panel is considering its decision. The personal representative and any witnesses must leave the room. This eliminates any chance of a personal representative swaying the panel during deliberation.
CHAPTER 35
Rule 3-8
Arbitrator Neutrality

KEY POINTS

This chapter covers:

a) Assignment of cases
b) Resolving a neutrality problem

Rule 3-8

No person shall serve as an arbitrator over any matter in which he/she personally or his/her company has any direct or indirect material interest.

Rule 3-8 addresses arbitrator objectivity and neutrality. The AF hearing administrator guards against assigning an arbitrator to a case that involves his or her company. If a case is inadvertently assigned to an arbitrator that involves the arbitrator’s company or represents any other potential personal interest, the arbitrator must immediately notify the AF hearing administrator. The administrator will reassign the case to a neutral arbitrator. AF supports and reinforces the importance of arbitrator neutrality and objectivity at the hearings and in workshops.
CHAPTER 36
Rule 3-9
Post-Hearing Coverage Denial

KEY POINTS

This chapter presents the procedures and time frames required for a post-hearing coverage denial.

Rule 3-9

Should a Respondent fail to deny coverage before the hearing, they may do so, in writing to AF, up to 60 days from the publication of the decision, if:

a) Applicant made its filing at least 120 days before the Statute of Limitations expires; and

b) Respondent pleads its defense at least 60 days before the Statute of Limitations expires; and

c) No prior response had been filed.

Upon notifying AF of the coverage denial following the hearing, the Respondent will be assessed a charge equal to the filing fee.

The purpose of Rule 3-9 is to protect all participants. The rule allows a Respondent who did not file a prior response and was not aware of the lack of coverage to raise the coverage defense following the hearing. It also gives the Applicant enough time to take other actions before the Statute of Limitations expires.

The Agreement’s Article Second, subsection (e) says arbitration is not compulsory if there is a lack of coverage. It is possible for a Respondent to have difficulty in confirming coverage before a hearing and discover a legitimate lack of coverage following the hearing. Normally a Respondent will raise its objection in its written answer to the Applicant’s filing. However, the Respondent does not give up its right to use an affirmative defense of coverage denial if it complies with Rule 3-9’s procedure and time limits.
The first time limit in Rule 3-9 restricts the opportunity to raise a post-hearing coverage denial to within 60 days following the decision publication date.

The second time limit specified in Rule 3-9 is the Applicant’s requirement to file at least 120 days before the Statute of Limitations expires. The 120-day period provides ample time for the Respondent to raise any objections to jurisdiction. It also provides ample time for the Applicant to take other action if the Respondent’s answer has a valid objection.

The third time limit referred to in Rule 3-9 is a requirement for the Respondent to answer with its written defense at least 60 days before the Statute expires. This gives the Applicant time to take other action to recover the damages. This 60-day requirement does not replace the Respondent’s responsibility to answer an Applicant’s filing within 10 days before the hearing date (Rule 2-3). If the Respondent does not raise the defense at least 60 days before the Statute’s expiration and the Applicant has filed 120 days before the Statute runs, it forever surrenders its right to the defense.

As stated in Rule 3-9 (c), the post-hearing coverage denial is allowed only if there was no previous answer to the Applicant’s filing by the Respondent. If the Respondent objects to jurisdiction following the hearing, it must pay AF an amount equal to the filing fee. AF levies this assessment charge to discourage parties from waiting until after a hearing to raise an affirmative defense. If the party had raised the defense with the original filing, the panel could withdraw the case and hear the next case on the docket.
CHAPTER 37
Rule 4-1
No Default Judgments

KEY POINTS

This chapter covers:

a) Default judgments

b) Establishing a position

Rule 4-1

Arbitration panels may not render default judgments. Decisions must be based on the evidence submitted.

There are no default judgments in Auto Arbitration. In other words, the Applicant will not prevail simply because Company 2(s) does not answer.

In Auto Arbitration, the Applicant must establish its position regarding negligence and/or damages to the satisfaction of the arbitration panel. What this means is that the Applicant is required to prove its position through the evidence it submits. The Arbitration panel must base its decision upon the facts, as determined by the contentions and evidence and application of the law pertaining to the circumstances being considered in the arbitration proceeding.
CHAPTER 38
Rule 4-2
Notice of Clerical or Jurisdiction Error

KEY POINTS

This chapter covers:

a) Clerical errors explained

b) Time limit for notice of an error

c) Jurisdictional error explained

d) AF’s Interpretation System and errors

Rule 4-2

Pursuant to Article Third, the arbitrating companies must provide written notice of the error to AF within thirty (30) days after the decision’s publication date. AF may also find and correct errors without notice from the arbitrating companies within thirty (30) days after the publication of the decision.

Rule 4-2 provides guidelines for correcting a clerical or jurisdictional error made by AF staff or by an arbitrator(s) following a decision. AF will void or amend an arbitration decision under very limited circumstances. The involved parties may bring these errors to AF’s attention or AF can take corrective action on their own without notice from the parties. If AF’s staff or the arbitrator(s) makes a clerical or jurisdictional error, AF will correct the error without penalizing the member. Upon confirmation of the error, AF will provide written notification to all parties and inform them of the action that will be taken.

Clerical errors are unintentional mistakes made by the AF staff or an arbitrator(s). For example, a panelist makes a mathematical error, or an AF File Processor makes an incorrect data entry. AF can correct a clerical error if notified within 30 days of the decision’s publication date. The decision’s publication date is the date when AF transmits or mails the decision to all interested parties.
**Jurisdictional errors** occur when an arbitration panel improperly proceeds with a hearing without resolving a pled potential jurisdictional impediment or dismisses a case where a party has not raised an objection of jurisdiction. For example, a party raises an **affirmative defense** that the statute of limitations expired and supports this defense with the appropriate evidence. The arbitration panel does not recognize or acknowledge this defense in the decision and rules on the merits of the case. The party that raised the defense can assert that the panel committed a **jurisdictional error** by not addressing the defense in their decision.

Although Rule 4-2 limits the scope of what can be corrected or amended, the belief that an arbitrator may have made an error concerns AF. Therefore, it has established an interpretation process. AF stresses that the interpretation system is not for overturning previous decisions. It is strictly to educate members and arbitrators. The feedback is also a quality control measure used to identify possible problem areas such as training deficiencies. AF considers this action a part of its educational and quality control program.
CHAPTER 39
Rule 4-3
Decision Delivery

KEY POINTS
This chapter covers:

a) Mail

b) Website

Rule 4-3
Decision Delivery

AF will transmit or mail the decision to all interested parties.

Rule 4-3 informs the interested parties about how AF sends the arbitration decision. Currently, AF uses First Class Mail to send hard copies of decisions. By using the word “transmit,” the rule also allows for any future electronic methods for delivering the decision. Within 7 days or less following the hearing, decisions are also posted and available on the Arbitration Forums website at www.arbfile.org.
CHAPTER 40
Rule 5-1
Award Payment

KEY POINTS
This chapter covers:

a) The time limit for paying an arbitration award

b) Publication date

Rule 5-1
The parties shall honor all awards within thirty (30) days of decision publication date.

Rule 5-1 establishes the maximum time limit that a party may wait to pay an award from an arbitration proceeding. Companies must comply with the arbitrator’s decision and award within 30 days of the publication date. The Automobile Subrogation Arbitration Definitions in the Agreement defines publication date as the date when AF transmits or mails the decision to all interested parties.
CHAPTER 41
Rule 5-2
Unpaid Award Follow-up Process

KEY POINTS

This chapter covers:

a) Letter to local senior claim representative

b) Soliciting AF’s help

c) Follow-up fee

d) Filing Litigation

Rule 5-2

When a party does not honor the award within thirty (30) days after publication:

(a) The prevailing company’s local representative must immediately send a written request for payment to the adverse company’s local senior representative, addressing them by name.

(b) If the award remains unpaid thirty (30) days after written request for payment, the prevailing party should send a copy of the letter to AF requesting assistance with award payment.

(c) AF will notify the non-paying Company and charge a fee.

(d) If the award remains unpaid for an additional thirty (30) days, the prevailing party is free to file in litigation for collection and will also be entitled to attorney’s fees, statutory interest from date of the award and costs incurred in pursuing collection.

All signatory companies are expected to comply with Rule 5-1 and pay an award. Rule 5-2 lists the steps the prevailing party must take to obtain the award if the adverse party does not comply with Rule 5-1.
If the prevailing party does not receive payment within 30 days after publication of the award, it must take the first step, which is to send a written request for payment to the delinquent company’s local senior claim representative. The prevailing party should use the claim manager’s name if possible, or, at a minimum, address the request to the correct position. A party should also be able to prove delivery in the event a negative response or no response elevates the problem.

The prevailing party should take the next step if the award remains unpaid 30 days after the written request for payment, which is soliciting the help of AF to obtain the award. AF will contact the highest level individual available at the delinquent company and inform the prevailing party of the action.

Thirty days after AF acts, the prevailing party is free to take the final step. The prevailing party may then sue the delinquent party to obtain the award. Rule 5-2 also entitles the prevailing party to obtain attorney fees and costs.
CHAPTER 42
Rule 5-3
Post-Award Obligations

KEY POINTS

This chapter includes:

a) Deductible paid to company – not the insured

b) Determining deductible award

c) Payment of supplemental damages

Rule 5-3

Payments made as a result of the award are to be made only to the Applicant. Payments must include any deductible interest, if applicable, in the interest of good will between the companies. An Applicant can file for supplemental damages if they are paid within ten (10) business days of the original hearing or anytime thereafter. The original liability decision is res judicata. The sole issue in this filing is the supplemental damages.

Rule 5-3 provides direction on the payment of an arbitration award. The Respondent must send award payments, if any, to the Applicant company only.

In the interest of good will between the signatory companies, any payment that is made as a result of an arbitration decision includes any applicable deductible interest. The arbitrator will award the deductible interest, if it applies, in proportion to the liability assessment.

The second half of Rule 5-3 addresses supplemental damages. The original arbitration finding on negligence is used to compute any damages. The Applicant can claim supplemental damages if it pays the damages anytime 10 business days before the original hearing date or anytime after the hearing. This 10-day timeframe coincides with the last day to submit documents for the hearing (Rules 2-2 and 2-3).
CHAPTER 43
Rule 6-1
Filing Fees

KEY POINTS
This chapter states when a party incurs a filing fee.

Rule 6-1

Upon filing, the Applicant incurs a filing fee payable to AF. A Respondent who files a Counterclaim shall also pay the prescribed fee.

Rule 6-1 specifies that the Applicant must pay the filing fee in Automobile Subrogation Arbitration. A filing fee also applies to Respondents who files a counterclaim against the Applicant. AF charge this fee upon receipt of the application or counterclaim. There are no exceptions to a party’s obligation to pay the filing fee, even if a party files a case in error.

The Agreement’s Article Fifth (d) grants AF the authority to establish fees on behalf of signatory companies. For most signatory companies, all claims and counterclaims filed in Automobile Subrogation Arbitration are included in the invoice sent to each company (on a monthly billing cycle) for the total cases filed and/or deferred during the billing month.

The current fee schedule is available on AF’s web site (www.arbfile.org).
CHAPTER 44
Rule 6-2
Photograph Return

KEY POINTS

This chapter discusses:

a) How and when AF disposes of case file materials

b) Requesting return of photographs

c) Envelope and postage requirements

Rule 6-2

AF will return photographs, if requested, as an Administrative Request on the Contentions Sheet and a self-addressed, stamped envelope of sufficient size and postage is provided. All other material will be destroyed following the hearing.

Rule 6-2 notifies each party that AF destroys all file materials after the hearing unless a party notifies AF in a specific manner that they want their photographs to be returned. This rule only applies to materials in AF’s files and neither replaces nor changes a participating party’s file maintenance policy.

AF discourages the use of original documents if photocopies will suffice. If a party supports its contentions with original photos and wants AF to return the photos, it should be noted in the Contentions Sheet’s Administrative Requests entry. The party also must provide a self-addressed, stamped envelope of sufficient size with the correct postage.
CHAPTER 45
Other AF Programs

KEY POINTS

This chapter describes

a) Other forums available at Arbitration Forums, Inc.

b) Information becoming a signatory.

Other AF Programs

Arbitration Forums, Inc. (AF) has other arbitration programs in addition to the Automobile Subrogation Arbitration Forum. An eligible insurance carrier, non-insured or self-insured entity can participate in one or all of the forums based on its specific claim needs. The following are descriptions of some available forums. Call your AF office for more information.

• Special Arbitration Forum (Special Program). The Special Arbitration Forum resolves disputes between insurers, self-insureds, and commercial insureds with retentions for claims involving third-party liability and/or disputes regarding concurrent, overlapping, or excess/primary coverage. The losses are not to exceed $250,000 unless agreed upon by the parties.

Special Arbitration is used:

• To apportion liability/damages when there are two or more parties allegedly responsible for the bodily injury and/or property damage of a third party.

• To resolve coverage disputes when there are two or more insurers or self-insureds allegedly providing coverage for the same insured.

• To resolve workers’ compensation subrogation claims against the alleged responsible party.

Settling the underlying claim and resolving the disputed liability and/or coverage issue via the Special Arbitration Forum helps member companies:

- Reduce severity by capping exposure

- Reduce litigation costs
• Increase productivity through faster closings
• Prevent potential bad case law that can result from cases going to trial

The following are examples of the wide range of cases that can be submitted:

• Two vehicles collide and veer into a third vehicle resulting in injuries to the driver of the third vehicle as well as property damage. The carriers for the two vehicles can’t agree on the apportionment of liability. The case is settled with the third party in behalf of both vehicles and the case is submitted to Special Arbitration to apportion the liability and damages.

• A delivery person is injured when he trips and falls making a delivery resulting in a workers compensation claim. The workers compensation carrier makes a subrogation claim against the premises owner, whose carrier denies liability. The workers compensation carrier submits the workers compensation subrogation claim against the premises owner’s carrier in Special Arbitration.

• An individual has an accident resulting in damage to a third party while driving his personal car on his employer’s business. The carriers for his personal auto and his employer can’t agree on how their coverage applies. The third party claim is settled and the case is submitted to Special Arbitration to resolve the coverage dispute.

• An individual obtains coverage for his auto with another company but failed to cancel his existing policy. He submits a collision claim to the new company who pays the claim and then learns of the existence of the first policy. The two carriers can’t agree on how their coverage should apply and the case is submitted to Special Arbitration to resolve the first-party coverage dispute.

• A man is injured when the blade comes off an electrical saw and makes a claim against the manufacturer and the company who recently made repairs on the saw. The carriers for the manufacturer and repair company can’t agree on liability. They settle the case with the claimant and submit the claim to Special Arbitration to apportion the liability and damages.

• **International Reciprocal Arbitration Agreement.** Signatories of the Automobile Subrogation Arbitration Agreement and the Canadian Intercompany Agreement agree to arbitrate any automobile accident claims occurring in the United States and Canada. Arbitration panels hear each case using the Agreement and the jurisdiction of the country where the accident occurs.

• **Property Subrogation Arbitration Forum.** This arbitration program compels participating companies to arbitrate disputes arising out of property subrogation claims that do not exceed $100,000. AF administers the compulsory arbitration of all subrogation claims under fire, extended coverage, additional extended coverage, and inland marine policies. Examples of typical Property Subrogation Arbitration Forum cases:

  Construction workers damage a home where they are working. The homeowner’s policy
pays for the damage. The homeowner’s insurer then files arbitration against the insurer of the construction company.

A furniture store delivery truck strikes an overhead power line. The dangling wire destroys the power transformer, causing an electrical surge. In turn, the surge destroys or damages appliances at a nearby residence. The resident’s insurer pays for the appliance destruction and damage. The insurer then files Property Subrogation Arbitration against the furniture store’s insurer.

• **Medical Payment (MedPay) Subrogation Arbitration Forum.** The MedPay Forum addresses questions and/or disputes arising from the pursuit and disposition of medical payment subrogation claims. The Forum does not apply to a particular state if a statute or judicial decision prohibits the subrogation of medical payment claims.

• **Personal Injury Protection (No-Fault) Arbitration Forum.** This forum resolves inter-company disputes arising from personal injury protection (PIP) subrogation claims under no-fault statutes. This forum has expanded to several states with PIP recovery provisions. The Agreement’s jurisdiction relates directly to the subrogation rights created under the applicable state’s statutes.

The Agreement is applicable in all states having a no-fault Law except New York. In New York, the program functions under the Insurance Department Regulations that are based on the format of AF’s Agreements and Rules. Insurers and self-insureds who have signed the PIP agreements must submit disputes to arbitration if the following conditions exist:

- The dispute arises from the pursuit of *direct action* recovery rights created through claim or benefit payments to insureds or other parties under a state’s no-fault law; and

- The amount in subrogation is within the limits established under the law of the state; and

- The parties to the dispute are insurers or qualified self-insurers under the state’s no-fault law; and

- The dispute does not involve a claim to which a disputing insurer asserts a coverage defense on any grounds.

• **Uninsured Motorists’ Arbitration Forum.** This forum applies when one company challenges the validity of another Company’s liability coverage disclaimer when an insured of **Company 1** claims injuries under the Uninsured Motorists part of its policy. If both carriers are signatories to the Agreement, they must submit their differences on the coverage question to a panel established under this Agreement.

Each forum operates under a separate agreement and rules that the arbitration panels must use in deciding liability and damages. An insurer must sign an agreement and follow the rules for a particular forum to participate in it.