Writing Quality Decisions: Special Arbitrators

Participant Guide
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Dispute Types
As an arbitrator, you must be able to determine the nature of the dispute, including the following dispute types:

- __________________________
- __________________________
- __________________________
- __________________________

A Quality Decision
A quality decision provides:

- An indication of which of the ___________ ___________ is involved.
- A ___________ of the party’s position on ___________, ___________, or ___________.
  It also provides a ___________ of ___________ and ___________ it supports or fails to support the party’s ___________.
- A statement ___________ your ___________ ___________ of the contentions and evidence submitted.
- An ___________ of how the involved companies ___________ or ___________ to prove their liability, damages, or coverage positions.

Summary of Dispute
- Indicates which of the ___________ ___________ is involved:
  - Appointment of Liability
  - Concurrent Coverage
  - Workers Compensation
Summary of Dispute Examples

Apportionment of Liability

<table>
<thead>
<tr>
<th>Decision Information</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Loss Summary</strong></td>
</tr>
<tr>
<td><strong>Summary of Dispute</strong></td>
</tr>
<tr>
<td>Alpha Insurance seeks contribution from Beta Insurance for a BI settlement arising out of an auto accident.</td>
</tr>
</tbody>
</table>

Concurrent Coverage

<table>
<thead>
<tr>
<th>Decision Information</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Loss Summary</strong></td>
</tr>
<tr>
<td><strong>Summary of Dispute</strong></td>
</tr>
<tr>
<td>This is a concurrent coverage dispute between the insurers of a general contractor and sub-contractor.</td>
</tr>
</tbody>
</table>

Workers’ Compensation

<table>
<thead>
<tr>
<th>Decision Information</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Loss Summary</strong></td>
</tr>
<tr>
<td><strong>Summary of Dispute</strong></td>
</tr>
<tr>
<td>Alpha Insurance seeks recovery of WC benefits paid as a result of a slip and fall accident.</td>
</tr>
</tbody>
</table>

Evidence Consideration

Review each piece of submitted evidence carefully.

Evidence Relevance and Credibility

- When considering each piece of evidence, consider whether it _______ to the dispute.
- Credibility is the quality of being _______.
- If evidence is relevant and credible, it _______ the party’s _______.

If a piece of evidence is credible, explain why. Conversely, if a piece of evidence is not credible, explain why.
Evaluating the Evidence

As the arbitrator, you will see many “word versus word” cases. You’ll look at numerous factors in weighing one witness or insured statement against another. For example:

- The opportunity to ________ the event. Was the witness in a position to see the incident when it happened?
- A witness’s _________. If the witness is a family member or other close relation to one of the parties involved, would that always affect the statement?
- ___________ with other evidence. Does what the witness says contradict other pieces of evidence?

Evidence Evaluation

\[ R + C = W \]

_________________ + __________________ = __________________

Making a Quality Decision

Before you can explain your decision, you must make your decision.

- Consider ________ points made. Sometimes parties “muddy” the water with issues or information not supported by evidence.
- Take the evidence presented to you at ___________ ___________. As an arbitrator, you are a neutral “evaluator” of the case each party presents. Weigh all evidence as presented; don’t dismiss certain evidence items because of a mindset about a particular type of evidence (for example, some consider police reports hearsay).
- Do not conduct your own ___________ ___________. Consider only the evidence presented to you by the involved parties.
- Base your decision on ___________ ___________. You should base it only on the facts presented and supported. Though it may be tempting to draw your own conclusions, you should not assume anything about the case that was not submitted by one of the parties.
Facts = ___________ + ___________. In arbitration, a fact is a contention supported by evidence. A contention alone is not considered a fact.

Don’t ___________ arguments not raised by either party.

Don’t ___________ additional evidence should have been submitted.

Call ___________ ___________ if unable to ___________ a piece of ___________.

Synopsis of Contentions

After reading the contentions, you must summarize each party’s position.

This section should contain:

➢ Recovery theory.
➢ Defense/liability theory.

Company 1 (Alpha)

Alpha Insurance (Company 1) acknowledges its driver failed to yield from a stop sign, and contends Beta Insurance (Company 2) breached its duty of proper lookout upon approach of an intersection. Alpha contends the intersection was open and Beta should have noticed Alpha was not slowing for her stop sign and taken evasive action.

Synopsis of Evidence

After summarizing the contentions, you must summarize the evidence.

First:

➢ Address the evidence.

➢ State how and why the evidence supports or fails to support the arguments.

Company 1 (Alpha)

In his statement to Alpha Insurance, the witness said Alpha did not slow or stop for the sign, and that Beta did not appear to react to Alpha not slowing for her sign. He said the intersection was free of visual obstructions. The police report narrative included the same witness observations noted above.

In his statement to Alpha, the Beta driver said he first saw Alpha “just before we hit,” and he described his view upon approach as free of visual obstructions; both of these admissions support Alpha’s argument that Beta failed to maintain proper lookout.
Worksheet
Enter only the damages proven.

Enter Percentage of liability/coverage assigned in Column 1. This will pre-fill the amount in Column 2.

Subtract the amount paid from the dollar amount in Column 2. **A value must be entered.** Then enter that amount in Column 3.

Dollar Amount Col 2: $ 1900
Less Amount Paid: $ 950
Column 3 Amount = $ 950
Columns 4 and 6 will pre-fill. Enter an amount for legal fees in Column 5 if applicable.

### Burden of Proof
- In arbitration, the burden of proof is a __________ of the __________.

### Decision
Once you have made a decision, you must clearly communicate it to the parties.
- Provide a brief statement regarding liability, damages, and/or coverage.
- Address how each party breached its duty if comparative.

### Decision Examples

#### No Award

Alpha Insurance did not prove Beta Insurance contributed to the passenger’s injury.

#### Comparative Award

Alpha Insurance proved Beta Insurance was 20% negligent due to inattention. Alpha is 80% negligent for failure to yield.
Concurrent Coverage

- Provide a brief statement regarding concurrent coverage.
- Address how the evidence supported or failed to support primacy of coverage.

Workers’ Compensation

- Provide a brief statement regarding liability and/or damages.
- Provide the basis of the findings and in what amount.

Evidence Explanation

- Conveys much in ___________ words and is ___________ in scope.

Evidence Explanation

Now that you have stated your decision, provide a detailed analysis of the evidence to support your decision. What did the evidence specifically contain and/or how did it factor into your decision?

- State the __________ item(s) used and what it __________ or __________.

The more detailed you are when writing your evidence analysis, the less likely it is that the parties will become confused.

- Include __________ about the evidence.
- Avoid __________ statements.
General statements don’t tell the parties anything; draw attention to the items of evidence or other information that played a role in your decision.

- Members love __________ from the evidence!
  - Quoting evidence demonstrates you analyzed it.

**Example of Quoting Evidence**

Alpha Insurance acknowledged its driver’s failure to yield was the proximate cause of the accident. In his statement to Alpha, the Beta driver said he first saw Alpha “just before we hit,” and he described his view upon approach as free of visual obstructions; both of these admissions support Alpha’s argument that Beta failed to maintain proper lookout.

Your decision should be able to be understood by any person at any experience level, for instance, a beginner-level adjuster versus an advanced adjuster; both should understand the decision made.

**Evidence Explanation Example**

“How and Why”

Your explanation should address **how** the evidence proved or did not prove each party’s arguments and **why** you made the decision.
Composing a Quality Decision

Writing your decision is as important as rendering it. Write your decision in a professional manner. Consider the following:

➢ Avoid _____________ and negativity.

➢ Use correct _____________ and _____________.

➢ _________________ your decision.

Example

In his statement, the witness said he had a good view traveling 100 feet behind Alpha, that Alpha never slowed or stopped for her stop sign, and Beta did not appear to react to the fact that Alpha was not slowing at all, despite the fact that it was clear and open. The witness reported these same observations to the officer per the police report narrative (Page 2), which strengthened the credibility of his statement.

In her statement, Alpha admitted she was unfamiliar with the area and explained that was why she never slowed. In Beta’s statement, he said he first saw Alpha “just before we hit,” and he acknowledged there were no visual obstructions upon his approach of the intersection. The Beta driver and the witness confirm the intersection was clear, which indicates Beta had the opportunity to notice Alpha wasn’t slowing and to take evasive action. Alpha met the preponderance of evidence standard to prove Beta breached his duty of proper lookout and contributed to the passenger’s injury.

Activity – Decision Explanation

Review the following contentions. Write your decision explanation using the recommendations and examples discussed earlier.

Company 1 (Alpha) Contentions

This is a liability dispute. Alpha paid 100% of the damages to the innocent party and is seeking 100% contribution from Beta who is negligent in this accident.

LOCATION: This loss occurred on April 1, 2013, at approximately 5 p.m., in Tampa, Florida, on 5th and Elm Street.

FACTS OF LOSS: The innocent party was traveling directly behind Beta, and Alpha was traveling directly behind the innocent party. All vehicles were in the turn lane at the intersection of Elm St. and 5th. The light turned, and the Beta vehicle went into the far right lane, which is a turn only lane and ends within 100 feet. This turn lane goes into an apartment complex. Alpha and the innocent party moved into the middle, non-turn lane. Beta then realized he was traveling
in a turning lane and suddenly, without warning, changed back into the center lane. The innocent party had to slam on his brakes to avoid striking Beta. Alpha then rear-ended the innocent party due to the sudden stop. (Please see Alpha and innocent party’s recorded statements). The police came to the scene and completed a report. The report confirms Beta merged into the center lane, cutting off the negligent-free vehicle, which caused the innocent party to brake suddenly, therefore, causing Alpha to rear-end the innocent party. Beta’s driver received the only citation for improper lane change (please see police report). Had Beta not made the sudden and improper lane change, Alpha would never have rear-ended the innocent party.

LIABILITY: Alpha asserts that Beta had the duty to yield the right-of-way and failed to uphold that duty. Beta is the sole and proximate cause of this loss for improper lane change.

Company 2 (Beta) Contentions

All three vehicles were traveling on Elm St. Beta was in the far right lane, and the other two vehicles were in the middle lane (Alpha was directly behind the innocent vehicle). Beta was trying to get into the middle lane as the far right lane ends. The innocent party thought Beta was turning right into an apartment complex, but when he saw Beta wanting to get into the middle lane, he stopped to let her in and was rear-ended by Alpha. Beta never made it into the middle lane and ended up going up onto the curb to avoid impact with the innocent party. There was no contact between Beta and either of the other vehicles. Beta returned to the scene as a witness to the accident between the innocent party (front vehicle) and Alpha (last vehicle).

A Tampa police officer charged Beta with improper lane change, but charges were later dropped by the prosecutor due to lack of supporting evidence. The police officer was not at the scene to witness an improper lane change; the driver of the innocent vehicle admits he never changed lanes, so the accident report should not be considered as evidence since it is false and misleading.

It is evident the proximate cause of the rear-end collision between Alpha and the innocent party was the failure of Alpha to maintain a safe following distance to avoid rear-ending a vehicle that had to make a sudden stop. Even if Beta’s vehicle “cut off” the innocent party as Alpha is alleging, there was no contact between the innocent party and Beta, which means the driver of the innocent vehicle left himself enough room to react. Judging by the extensive damage to the front of Alpha’s vehicle, it is clear the Alpha driver was not paying attention and following too closely, which resulted in the collision.

Complete the following:

Provide a detailed analysis of the evidence to support the decision (explaining what it contains and how it factored into the decision).