

## *Accident Claims Arbitration* RULES

(Including Mediation)

*For use in New York State and effective on January 1, 1996*

The American Arbitration Association (AAA) is a public-service, not-for-profit organization offering a broad range of dispute resolution services to business executives, attorneys, individuals, trade associations, unions, management, consumers, families, communities, and all levels of government. Services are available through AAA headquarters in New York and through offices located in major cities throughout the United States. Hearings may be held at locations convenient for the parties and are not limited to cities with AAA offices. In addition, the AAA serves as a center for education and training, issues specialized publications, and conducts research on all forms of out-of-court dispute settlement.

Automobile insurance policies written in every state protect an insured against personal injury caused by uninsured and hit-and-run motorists. The standard uninsured-motorist endorsement is one in which the insurer promises to pay all sums that the insured is legally entitled to recover as damages from the owner or operator of an uninsured automobile because of bodily injury sustained by the insured, caused by an accident and arising from ownership, maintenance, or use of the uninsured automobile; provided that the determination as to whether the insured is legally entitled to recover damages and, if so, the amount thereof shall be made by agreement between the insured and the company or, if they fail to agree, by arbitration.

This endorsement contains a provision for arbitration, which typically reads as follows.

Arbitration If any person making a claim hereunder and the company do not agree that that person is legally entitled to recover damages from the owner or operator of an uninsured automobile because of the amount of payment that might be owing under this endorsement, then, upon written demand of either, the matters on which that person and the company do not agree shall be settled by arbitration administered by the American Arbitration Association under its rules and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The person and the company agree to consider themselves to be bound by any award made by the arbitrator pursuant to this endorsement.

In 1956, at the request of the insurance industry, the American Arbitration Association established these procedures for arbitrating such matters.

Mediation procedures are also provided for those parties who wish to make use of them. The AAA encourages parties to submit their accident claims disputes to mediation, which has proven to be a prompt, fair, and economical method of resolving insurance claims. The mediation provisions of the AAA's Dispute Resolution Procedures for Insurance Claims will be utilized where the parties agree to mediate their dispute.

## THE PROCESS

In mediation, the mediator assists the parties in reaching their own settlement, but does not have

the authority to make a binding decision or award.

## THE MEDIATOR

Mediators appointed under this program are experienced attorneys. They have specific training or experience in mediation and are prepared to offer prompt service. The AAA makes every effort to appoint mediators who are acceptable to both parties. Upon an objection by either party, the AAA will replace a mediator.

## USING THE MEDIATION PROCESS

Because mediation is voluntary, all parties to the dispute must consent to participate. Upon request, a mediation submission form will be provided by the AAA, or you may indicate your willingness to mediate by placing a check mark in the appropriate box on the Demand for Arbitration form. The AAA will contact the other parties and attempt to obtain their agreement to mediate.

If there is no agreement to mediate or if mediation proves unsuccessful, the parties may continue the arbitration.

## COST

The initial administrative fee and the insurance-carrier surcharge are applied to the cost of administering the mediation. In addition, there is suggested mediator compensation of \$150 per party. The exact compensation rate for the mediator will be agreed upon by the parties in each case, with the assistance of the AAA.

## ACCIDENT CLAIMS ARBITRATION RULES

### 1. Agreement of Parties

The parties make these rules a part of their arbitration agreement whenever a policy of insurance or applicable insurance-department regulation provides for arbitration by the American Arbitration Association (AAA) in connection with a dispute involving a motor-vehicle liability claim. These rules and any amendment of them shall apply in the form obtaining at the time the arbitration is initiated, except for any such provision that may be inconsistent with the arbitration agreement or with applicable law.

### 2. Administrator and Delegation of Duties

When parties agree to arbitrate under these rules, or when they provide for arbitration by the AAA and an arbitration is initiated under these rules, they thereby authorize the AAA to administer the arbitration. The duties of the AAA under these rules may be carried out through such representatives as the AAA may direct.

### 3. Panel of Arbitrators

The AAA shall establish and maintain an Accident Claims Panel of arbitrators made up of

attorneys with negligence experience. Each of the AAA's regional offices will maintain an Advisory committee, made up of equal numbers of at least three members of the defense bar and/or the insurance industry and three members of the plaintiffs bar, which will approve the qualifications of the members of that panel. Each committee shall meet at least once a year.

#### 4. Initiation under an Arbitration Provision in a Policy

When the conditions precedent contained in the insurance policy or state insurance-department regulations have been complied with, arbitration shall be initiated by filing a written Demand for Arbitration. The demand shall be served by US certified mail-return receipt requested. When filed by an insured, it shall be directed to the claims office of the insurer under whose policy arbitration is sought, at the office where the claim has been discussed, or at the office of the insurer closest to the residence of the insured.

The demand shall set forth the following information:

- (1) the name, address, and telephone number of the insured person(s) and the filing attorney;
- (2) the name, address, and policy number of the policyholder;
- (3) the identity and location of the claims office of the insurer, if known; the claim's file number, if known; and the name of the individual with whom the claim was discussed;
- (4) the date and the location of the accident;
- (5) the nature of the dispute and the injuries alleged;
- (6) the amount of uninsured-motorist policy limits and the amount claimed thereunder; and
- (7) the address of the AAA regional office at which copies of the demand are being filed.

Three copies of the demand must be filed with an AAA regional office at the same time, with a copy of the parts of the policy or regulations relating to the dispute, including the arbitration provisions, together with the administrative filing fee.

The AAA will acknowledge receipt of the demand to all parties. If, within thirty calendar days after acknowledgment of the demand by the AAA, the insurer moves in court to contest coverage, applicable policy limits, or the stacking of policy coverage, administration will be suspended until such issues are decided.

Issues as to coverage, applicable policy limits, or stacking of policy coverage may be referred to voluntary coverage arbitration with the agreement of all parties before an arbitrator appointed by the AAA from a panel designated to hear such issues. These issues will be submitted to the arbitrator on documents only, unless the parties agree otherwise or the arbitrator determines that an oral hearing is necessary. In the absence of an agreement to submit such issues to arbitration, accident claims arbitrators may only decide contested issues of coverage, applicable policy limits, or stacking of policy coverage where ordered to do so by a court or where so authorized by law.

Unless there is (1) an agreement to submit such issues to voluntary coverage arbitration, (2) a

motion to contest coverage, applicable policy limits, or the stacking of policy coverage made within thirty calendar days after acknowledgment of the demand by the AAA, or (3) a court order staying arbitration, the AAA will proceed with the administration of the case.

## 5. Change of Claim

If any party desires to make any new or different claim, same shall be made in writing and filed with the AAA and a copy thereof mailed to the other party. After the arbitrator is appointed, no new or different claim may be submitted except with the arbitrator's consent.

## 6. Initiation under a Submission

Parties to any existing dispute may commence an arbitration under these rules by filing at any regional office of the AAA three copies of a written submission to arbitrate under these rules, setting forth the information specified in Section 4.

## 7. Fixing of Time and Locale

The arbitration hearing shall be held in the arbitrator's office or any other appropriate place selected by the arbitrator. To the extent practicable, the arbitration hearing shall be held within the general locale of the applicant's residence but, in no event, more than a hundred miles from such residence, unless the parties agree otherwise. The arbitrator shall set the date, the time and the place for such hearing. The AAA shall send a notice of hearing to each party at least twenty calendar days in advance, unless the parties by mutual agreement waive such notice.

## 8. Designation of Arbitrator

If a specific method of appointing an arbitrator is indicated in the policy or agreed upon in writing by the parties, that procedure shall be followed. If the parties request, in writing, that the AAA assist in appointing a neutral arbitrator to complete a pre-designated panel, there will be an additional fee of \$300 borne equally by the parties for the compensation of that arbitrator.

Unless applicable law or the agreement of the parties provides otherwise, the dispute shall be determined by one arbitrator, except as otherwise provided in this section. The AAA will submit a list of nine members of the Accident Claims Panel from which each party shall have the right to strike up to two names on a peremptory basis, within twenty days of the AAA's submission of the list. The AAA will appoint the arbitrator from among the remaining names.

Where the amount claimed and available coverage limits exceed minimum statutory financial-responsibility limits, upon the request of a party made within twenty calendar days after acknowledgment of the demand by the AAA, the dispute shall be determined by three arbitrators. The AAA will submit a list of thirteen names from the Accident Claims Panel, allowing each party to strike up to three names on a peremptory basis, within twenty days of the AAA's submission of the list. The AAA will appoint three arbitrators from among the remaining names. An additional administrative fee of \$900 shall be due and payable at the time the request for a panel of three arbitrators is made.

If the parties fail to agree on any of the persons named on the list of arbitrators, if acceptable

arbitrators are unable to act, or if, for any other reason, the appointment cannot be made from the submitted lists, the AAA shall have the power to make the appointment from among other members of the panel without submitting additional lists.

#### 9. Compensation of Arbitrators Directly Appointed by the Parties

Arrangements for the compensation of party-appointed arbitrators and neutral arbitrators appointed without the assistance of the AAA are private matters between the arbitrators and the parties.

#### 10. Qualifications of Arbitrator

No person shall serve as an arbitrator in any arbitration in which that person has any financial or personal interest. An arbitrator shall disclose any circumstances likely to create a presumption of bias which might disqualify that arbitrator as an impartial arbitrator. Any party shall have the right to challenge the appointment of an arbitrator for reasonable cause. The AAA shall determine whether the arbitrator should be disqualified and shall inform the parties of its decision, which shall be conclusive.

If for any reason an appointed arbitrator should be unable to perform the duties of the office, the AAA shall appoint a replacement from among those names remaining on the list(s) submitted to the parties. If an appointment cannot be made from the list(s), the AAA shall appoint a replacement in accordance with the provisions of Section 8.

#### 11. Representation

Any party may be represented by counsel or other authorized representative. A party intending to be so represented shall notify the other party and the AAA of the name and address of such representative at least three days prior to the date set for the hearing at which the representative is first to appear. When an arbitration is initiated by counsel or when an attorney replies for the other party, such notice is deemed to have been given.

#### 12. Stenographic Record

Any party wishing a stenographic record shall make arrangements directly with a stenographer and shall notify the other party of such arrangements in advance of the hearing. The requesting party or parties shall pay the cost of the record. If such transcript is agreed by the parties to be, or determined by the arbitrator to be, the official record of the proceeding, it must be made available to the arbitrator and to the other party for inspection, at a time and place determined by the arbitrator.

#### 13. Interpreters

Any party wishing an interpreter shall make all arrangements directly with the interpreter and shall assume the costs of such service.

#### 14. Attendance at Hearings

The arbitrator shall maintain the privacy of the hearings unless the law provides to the contrary. Any person having a direct interest in the arbitration is entitled to attend hearings. The arbitrator shall otherwise have the power to require the exclusion of any witness, other than a party or other essential person, during the testimony of any other witness. It shall be discretionary with the arbitrator to determine the propriety of the attendance of any other person.

#### 15. Postponements

The arbitrator may, for good cause, postpone the hearing upon the request of a party or upon the arbitrator's own initiative, and shall grant such postponement when all of the parties agree thereto.

#### 16. Oaths

Before proceeding with the first hearing, each arbitrator may take an oath of office and, if required by law, shall do so. The arbitrator may require witnesses to testify under oath administered by any duly qualified person and, if required by law or requested by either party, shall do so.

#### 17. Arbitration in the Absence of a Party or Counsel

Unless the law provides to the contrary, the arbitration may proceed in the absence of any party or counsel who, after due notice, fails to be present or fails to obtain an adjournment. An award shall not be made solely on the default of a party. The arbitrator shall require the party who is present to submit such evidence as is deemed necessary for the making of an award.

#### 18. Order of Proceedings

A hearing shall be opened by the filing of the oath of the arbitrator, where required; by the recording of the place, time, and date of the hearing and the presence of the arbitrator, the parties, and counsel, if any; and by the receipt by the arbitrator of the statement of the claim and answer, if any.

The arbitrator may, at the beginning of the hearing, ask for statements clarifying the issues involved. The claimant shall then present its claims, proofs, and witnesses, who shall submit to questions or other examination. The respondent shall then present its defenses, proofs, and witnesses, who shall submit to questions or other examination.

The arbitrator has discretion to vary this procedure but shall afford full and equal opportunity to the parties for the presentation of any material or relevant proofs.

Exhibits, when offered by either party, may be received in evidence by the arbitrator.

The names and addresses of all witnesses and exhibits in the order received shall be made a part of the record.

The parties may, by written agreement, provide for the waiver of oral hearings. If the parties are

unable to agree as to the procedure, the AAA shall specify a fair and equitable procedure.

#### 19. Evidence

The parties may offer such evidence as is relevant and material to the dispute and shall produce such additional evidence as the arbitrator may deem necessary to an understanding and determination of the dispute. An arbitrator authorized by law to subpoena witnesses or documents may do so upon the request of any party or independently.

The arbitrator shall be the judge of the relevance and materiality of the evidence offered, and conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of all of the arbitrators and all of the parties, except where any of the parties is absent in default or waives the right to be present.

Any party intending to offer any medical report or record at the hearing must provide the other party with a copy at least twenty days in advance thereof.

#### 20. Evidence by Affidavit and Posthearing Filing of Documents

The arbitrator may receive and consider the evidence of witnesses by affidavit, but shall give it only such weight as the arbitrator deems it entitled to after consideration of any objection made to its admission.

If the parties agree or the arbitrator directs that documents are to be submitted to the arbitrator after the hearing, they shall be filed with the AAA for transmission to the arbitrator. All parties shall be afforded an opportunity to examine such documents.

#### 21. Majority Decision

Whenever there is more than one arbitrator, all decisions of the arbitrators must be by at least a majority. The award must also be made by at least a majority unless the concurrence of all is expressly required by the arbitration agreement or by law.

#### 22. Closing of Hearing

The arbitrator shall specifically inquire of all parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies, or if satisfied that the record is complete, the arbitrator shall declare the hearing closed and a minute thereof shall be recorded. If briefs are to be filed, the hearing shall be declared closed as of the final date set by the arbitrator for the receipt of briefs. If documents are to be filed as provided for in Section 20 and the date set for their receipt is later than that set for the receipt of briefs, the later date shall be the date of closing the hearing. The time limit within which the arbitrator is required to make the award shall commence to run, in the absence of other agreements by the parties, upon the closing of the hearing.

#### 23. Reopening of Hearing

The hearing may be reopened by the arbitrator at will or upon application of a party at any time

before the award is made. If reopening the hearing would prevent the making of the award within the specific time agreed upon by the parties in the contract out of which the controversy has arisen, the matter may not be reopened, unless the parties agree upon an extension of time. When no specific date is fixed in the contract, the arbitrator may reopen the hearing, and the arbitrator shall have thirty days from the closing of the reopened hearing within which to make an award.

#### 24. Waiver of Rules

Any party who proceeds with the arbitration after knowledge that any provision or requirement of these rules has not been complied with and who fails to state objection thereto in writing shall be deemed to have waived the right to object.

#### 25. Extensions of Time

The parties may modify any period of time by mutual agreement. The AAA may for good cause extend any period of time established by these rules except the time for making the award. The AAA shall notify the parties of any such extension and the reason therefor.

#### 26. Serving of Notice

(a) With the exception of the demand, which shall be served by US certified mail-return receipt requested, each party shall be deemed to have consented that any papers, notices, or process necessary or proper for the initiation or continuation of an arbitration under these rules; for any court action in connection therewith; or for the entry of judgment on any award made under these rules may be served upon such party by mail addressed to such party or its attorney at the last known address or by personal service, in or outside the state where the arbitration is to be held, provided that reasonable opportunity to be heard with regard thereto has been granted to such party.

(b) To facilitate communication between the parties and the AAA, the parties agree that communications received from each other or the AAA via facsimile machine, telex, telegram, or other written forms of electronic communication are valid and proper notice under these rules.

#### 27. Communication with Arbitrator

There shall be no direct communication between the parties and an arbitrator other than at oral hearings. Any other oral or written communication from the parties to an arbitrator shall be directed to the AAA for transmission to the arbitrator.

#### 28. Time of Award

The arbitrator shall render the award promptly and, unless otherwise agreed by the parties or specified by law, no later than thirty days from the date of closing the hearing, or, if oral hearings have been waived, from the date of transmitting the final statements and proofs to the arbitrator.

#### 29. Form of Award

The award shall be in writing and shall be signed either by the sole arbitrator or by at least a majority if there is more than one arbitrator. It shall be executed in the manner required by law.

### 30. Scope of Award

The arbitrator shall render a decision determining whether the insured person has a right to receive any damages under the policy and the amount thereof, not in excess of the applicable policy limits. The award shall not contain a determination as to issues of coverage except as provided in Section 4.

### 31. Award upon Settlement

If the parties settle their dispute during the course of the arbitration, the arbitrator may, upon their request, set forth the terms of the agreed settlement in an award.

### 32. Delivery of Award to Parties

Parties shall accept as legal delivery of the award the placing of the award or a true copy thereof in the mail addressed to such party or its attorney at the last known address, personal service of the award, or the filing of the award in any other manner that may be permitted by law.

### 33. Expenses

The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the arbitration, including required traveling and other expenses of the arbitrator and of AAA representatives, and the expenses of any witness and the cost of any proof produced at the direct request of the arbitrator, shall be borne equally by the parties, unless they agree otherwise or unless the arbitrator in the award assesses such expenses or any part thereof against any specified party or parties.

### 34. Applications to Court and Exclusion of Liability

(a) No judicial proceeding by a party relating to the subject matter of the arbitration or mediation shall be deemed a waiver of the party's right to arbitrate.

(b) Neither the AAA nor any arbitrator or mediator in a proceeding under these rules is a necessary party in judicial proceedings relating to the arbitration or mediation.

(c) Parties to these rules shall be deemed to have consented that judgment upon the arbitration award may be entered in any federal or state court having jurisdiction thereof.

(d) Neither the AAA nor any arbitrator or mediator shall be liable to any party for any act or omission in connection with any arbitration or mediation conducted under these rules.

### 35. Release of Documents for Judicial Proceedings

The AAA shall, upon the written request of a party, furnish to such party, at its expense, certified copies of any papers in the AAA's possession that may be required in judicial proceedings

relating to the arbitration.

### 36. Interpretation and Application of Rules

The arbitrator shall interpret and apply these rules insofar as they relate to the arbitrator's powers and duties. When there is more than one arbitrator and a difference arises among them concerning the meaning or application of these rules, it shall be decided by a majority vote. If that is unobtainable, either an arbitrator or a party may refer the question to the AAA for final decision. All other rules shall be interpreted and applied by the AAA.

#### Administrative Fees

An initial administrative fee in the amount of \$250 shall be paid to the AAA by the party initiating the mediation or arbitration. No refund of the initial fee is made when a matter is withdrawn or settled after filing.

If the parties engage in voluntary coverage arbitration followed by arbitration of the remaining liability and damage issues, there will be an additional administrative fee of \$100 per party.

Where a case is heard by three arbitrators, the party requesting three arbitrators shall pay an additional administrative fee of \$900, due and payable at the time the request is made.

#### Surcharge

The balance of the administrative costs of the AAA is covered by a \$250-per-case surcharge paid by the insurer or self-insurer involved.

#### Arbitrator Compensation

Arbitrators from the AAA's Accident Claims Panel shall be compensated at the rate of \$150 per case concluded. This fee will be paid by the AAA from the administrative fees collected in the case.

Arbitrators on a three-arbitrator panel shall be compensated at the rate of \$300 per case concluded. The fee will be paid by the AAA from the administrative fees collected from the party requesting a three-arbitrator panel.

Arbitrators serving under these rules shall receive compensation as indicated above unless the parties advise the AAA in writing, at least seven business days before the scheduled day of the first hearing, that the case has been settled.

#### Additional-Hearing Fees

A fee of \$50 is payable by each party for each hearing held after the first hearing.

#### Hearing-Room Rental

Hearing rooms for second and subsequent hearings are available on a rental basis at AAA offices. Check with your local office for specific availability and rates.

## Postponement Fees

A fee of \$50 is payable by a party causing a postponement of any hearing scheduled before a single arbitrator. For second or subsequent postponements before a single arbitrator, a fee of \$100 will be paid by the party causing the postponement.

A fee of \$75 is payable by a party causing a postponement of any hearing scheduled before a multiarbitrator panel. For second or subsequent postponements before a multiarbitrator panel, a fee of \$150 will be paid by the party causing the postponement.