

Insurance Claims Dispute Resolution PROCEDURES As Amended and Effective on January 1, 1989

INTRODUCTION

The Program

These dispute resolution procedures have been designed by the AAA to assist claimants, their counsel, insurers, and self insureds to settle insurance claims disputes quickly and fairly.

The American Arbitration Association

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, insurers, individuals, trade associations, unions, management, consumers, families, communities, and all levels of government. Services are available through AAA headquarters in New York City 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.

Mediation or Arbitration

Under these procedures, parties may submit disputes to either mediation, arbitration, or other forms of dispute resolution.

Mediation is a process in which a neutral assists the parties in reaching their own settlement but does not have the authority to force the parties to accept a binding decision.

Arbitration is a process in which each side presents its case at a hearing to a neutral who renders a final and binding decision.

The parties might wish to stipulate in the submission that the decision of the arbitrator will be advisory in nature and nonbinding. The parties might also wish to limit the authority of the arbitrator by stipulating the upper and lower dollar limits of the award in a control contract. The AAA will assist the parties in making such arrangements.

The Panel

Arbitrators and mediators selected for this program are skillful, experienced, and neutral individuals with an understanding of current legal and business practices. Arbitrators must be attorneys or retired judges. Mediators are not necessarily attorneys, yet all have many years' experience in mediation techniques.

Time

This program has been designed to resolve claims in an efficient and equitable fashion, usually within ninety days of submission of a dispute.

Cost

The program is inexpensive. There is an administrative fee of \$150 per party for appointment of a neutral and scheduling of an arbitration hearing or a mediation conference, plus a suggested

compensation fee of \$300 per day for the neutral arbitrator or mediator, to be paid equally by the parties (\$150 per party). The exact compensation rate for the neutral will be agreed by the parties in each case, with the assistance of the AAA.

Filing

Any party may ask the AAA to invite another party to join in a submission to arbitration, mediation, or another form of alternative dispute resolution. This can be done by calling the nearest AAA office, by fax, or by mail. Upon receipt of such a request, the AAA will contact the other parties involved in the dispute and attempt to obtain an agreement to submit to dispute resolution. There will be no charge to the filing party if the other parties do not agree to submit the claim to dispute resolution. If, however, the case settles after AAA involvement but prior to submission to the dispute resolution process, the filing party will pay a \$150 filing fee.

Joint Submission

Parties may also jointly initiate a case under these procedures simply by providing the AAA with a submission form with the following information:

- signatures of all parties (or counsel);
- names, addresses, and telephone numbers of all parties to the case, along with the insurance-company file or claim number and any court docket number;
- the procedure selected by the parties-mediation, arbitration, or another dispute resolution method;
- the nature and the amount of the claim (a brief description of the claim and the response of the insurer);
- limitations, if any, on the neutral's authority;
- the preferred place of hearing (any AAA regional office or another appropriate location); and
- an administrative fee of \$150 per party.

Further Information

For further information, contact your local AAA office. Forms and explanatory materials are available free of charge from all AAA offices.

DISPUTE RESOLUTION PROCEDURES FOR INSURANCE CLAIMS

1. Agreement of Parties

These dispute resolution procedures shall apply whenever the parties have agreed to use them. By mutual agreement, in writing, the parties may modify any provision.

2. Initiation of Dispute Resolution Procedures

Where there is no submission or contract providing for dispute resolution, a party may request the AAA to invite other parties to join in a submission to dispute resolution. Upon receipt of such a request, the AAA will contact the other parties involved in the dispute and attempt to obtain a submission. There will be no charge to the filing party if the other parties do not agree to submit the claim to dispute resolution. If, however, the case settles after AAA involvement but prior to submission to the dispute resolution process, the filing party will pay a \$150 filing fee.

Cases may be initiated by a joint submission in writing, containing a brief description of the dispute and the names and addresses of the parties, together with the \$150 per party filing, fee as provided later in these rules.

3. Appointment of Arbitrator or Mediator

The AAA shall appoint a neutral knowledgeable in the area of the dispute, and provide the parties with biographical information about the neutral. Arbitrators shall be attorneys or retired judges. Mediators are not necessarily attorneys. The parties shall agree in advance as to whether the neutral is to issue a binding decision as an arbitrator.

4. Qualifications of Neutral

No person shall serve as a neutral in any matter in which that person has any financial or personal interest in the result of the proceeding. Prior to accepting appointment, a person being considered for such appointment shall disclose any circumstance likely to prevent a prompt hearing or to create a presumption of bias. Upon receipt of such information, the AAA will either replace that person or communicate the information to the parties for comments. After reviewing any comments received from the parties, the AAA may disqualify that person. Vacancies shall be filled in accordance with Section 3 of these procedures.

5. Date, Time, and Place of Mediation Conference or Arbitration Hearing

The neutral shall set the date, time, and place of the mediation conference or arbitration hearing. The AAA shall mail to each party notice thereof at least ten days in advance, unless the parties by mutual agreement waive such notice or modify the terms thereof. If the matter is to be mediated, the mediator will arrange an appropriate format with the parties.

6. Representation

Any party may be represented by counsel or other authorized representative.

7. Postponements

Conferences or hearings may be postponed by the neutral for good cause.

8. Stenographic Record

There shall be no stenographic record of any mediation conference. In an arbitration, any party desiring a stenographic record shall make arrangements directly with a stenographer and shall notify the other parties of such arrangements in advance of the hearing. The requesting party or parties shall pay the cost of the record.

If the 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 parties for inspection, at a date, time, and place determined by the arbitrator.

9. Interpreters

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

10. Attendance at Mediation Conference or Arbitration Hearing

The neutral shall maintain the privacy of the proceedings unless the law provides to the contrary.

Any person having a direct interest in the mediation or arbitration is entitled to attend conferences or hearings. The neutral 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 neutral to determine the propriety of the attendance of any other person.

11. Arbitration Hearing

A hearing may be conducted by the arbitrator in any manner which permits a fair presentation of the case by the parties. Normally, the hearing shall be completed within one day. Only for good cause shown may the arbitrator schedule additional hearings.

12. Evidence in Arbitration

The arbitrator shall be the judge of the relevance and materiality of the evidence offered.

13. Closing of Arbitration Hearing

The arbitrator shall ask whether the parties have any further proofs or testimony to offer. Upon determining that the presentations are concluded, the arbitrator shall declare the hearing closed.

14. Arbitration Award

The award shall be in writing and shall be signed by the arbitrator. It shall be rendered promptly and, unless otherwise stipulated, no later than thirty days following the closing of the hearing.

15. Arbitration Award upon Settlement

If the parties settle their dispute during the course of the mediation or arbitration, the neutral, upon their request, may set forth the terms of the agreed settlement in an award. Such an award is referred to as a consent award.

16. Delivery of Arbitration Award to Parties

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

17. Confidentiality in Mediation

Confidential information disclosed to a mediator by the parties or by witnesses in the course of the mediation shall not be divulged by the mediator. All records, reports, or other documents received by a mediator while serving in that capacity shall be confidential. The mediator shall not be compelled to divulge such records or to testify in regard to the mediation in any adversary proceeding or judicial forum.

The parties shall maintain the confidentiality of the mediation and shall not rely on or introduce as evidence in any arbitral, judicial, or other proceeding

(a) views expressed or suggestions made by another party with respect to a possible settlement of the dispute;

(b) admissions made by another party in the course of the mediation proceedings;

(c) proposals made or views expressed by the mediator; or

(d) the fact that another party had or had not indicated willingness to accept a proposal for settlement made by the mediator.

18. Serving of Notice

Each party shall be deemed to have consented that any papers, notices, or process necessary or proper for the initiation or continuation of a proceeding under these procedures; for any court action in connection therewith; or for the entry of judgment on any award made under these rules may be served on a party by mail addressed to the party or its representative at the last known address or by personal service, in or outside the state where the mediation or arbitration is to be held, provided that a reasonable opportunity to be heard with regard thereto has been granted to the party. The AAA and the parties may also use facsimile transmission, telexes, telegrams, or other written forms of electronic communication to give the notices required by these procedures.

19. Waiver of Procedures

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

20. Extensions of Time

The parties may modify any period of time by mutual agreement. The AAA or the neutral may for good cause extend any period of time established by these procedures, except the time for making the arbitration award. The AAA shall notify the parties of any extension of time.

21. Expenses

The expenses of witnesses for any party shall be paid by the party producing such witnesses. All expenses of the arbitration, including required travel and other expenses of the arbitrator, AAA representatives, and 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.

22. Interpretation and Application of Procedures

The neutral shall interpret and apply these procedures insofar as they relate to the neutral's powers and duties. All other procedures shall be interpreted and applied by the AAA.

23. Applications to Court and Exclusion of Liability

(a) No judicial proceedings by a party relating to the subject matter of a proceeding under these procedures shall be deemed a waiver of the party's right to mediate or arbitrate.

(b) Neither the AAA nor any neutral serving under these procedures is a necessary party in judicial proceedings relating to the arbitration or mediation.

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

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

ADMINISTRATIVE FEES

Filing Fee

There is no charge to the filing party where the AAA is requested to invite other parties to join in a submission to dispute resolution, and the other parties do not agree to same, except that, if a case settles after AAA involvement but prior to submission to dispute resolution, the filing party will be charged a \$150 filing fee.

A nonrefundable administrative fee of \$150 per party shall be paid to the AAA at the time the parties agree to use the AAA Dispute Resolution Procedures for Insurance Claims.

Additional Hearings

A fee of \$50 is payable by each party for each second or subsequent mediation conference or arbitration hearing that is either clerked by the AAA or held in a hearing room provided by the AAA.

Postponement Fee

A fee of \$50 is payable by a party causing a postponement of any scheduled mediation conference or arbitration hearing.

Neutral Fee

The AAA will assist the parties in determining an appropriate fee for the neutral, which shall be payable prior to the hearing.

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