

Rules for Arbitration of Supplementary Uninsured/Underinsured Motorist Insurance Disputes and Uninsured Motorist Insurance Disputes in the State of New York

Effective on October 1, 1998

Effective for Requests Filed with the American Arbitration Association for Disputes Involving Supplementary Uninsured/Underinsured Motorist Coverage Arising Out of Accidents Covered under Policies Issued or Renewed on or after October 1, 1993, and for Disputes Involving Uninsured Motorist Coverage Arising Out of Accidents Covered under Policies Issues or Renewed on or after September 1, 1996.

Adopted Pursuant to New York Insurance Law and Regulations Promulgated by the New York State Superintendent of Insurance

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Introduction

Pursuant to Section 3420(f)(2) of the New York Insurance Law, the Superintendent of Insurance promulgated Part 60-2 of Title 11 of the Official Compilation of Codes, Rules, and Regulations of the State of New York (Regulation 35-D), entitled Supplementary Uninsured Motorist ("SUM") Insurance, prescribing the SUM endorsement to be used for motor vehicle bodily injury liability

policies issued or renewed on or after October 1, 1993. Pursuant to Section 5206 of the New York Insurance Law, the New York Motor Vehicle Accident Indemnification Corporation ("MVAIC") prescribed the Uninsured Motorist ("UM") endorsement to be used for motor vehicle bodily injury liability policies issued or renewed on or after September 1, 1996. The American Arbitration Association is privileged to administer the optional arbitration provisions under these endorsements.

Requests for arbitration of claims involving accidents pursuant to the Supplementary Uninsured/Underinsured Motorist endorsement in policies issued or renewed on or after October 1, 1993, or pursuant to the Uninsured Motorist endorsement in policies issued or renewed after September 1, 1996, may be filed with the American Arbitration Association and will be administered under these rules. All other disputes involving a motor vehicle uninsured motorist claim not subject to these rules will be arbitrated in accordance with the Association's Accident Claims Arbitration Rules.

If an insured making a claim under an issued SUM endorsement and the insurer do not agree that the insured is legally entitled to recover damages from the owner or operator of an uninsured/underinsured motor vehicle because of bodily injury sustained by the insured or do not agree as to the amount of payment that may be owing under SUM coverage, then, at the option and upon written demand of the insured, the matters upon which the insured and the insurer do not agree may be settled by arbitration administered by the American Arbitration Association pursuant to the procedures that follow. If, however, the maximum amount of coverage provided by the SUM endorsement equals the amount of coverage required to be provided by Section 3420(f)(1) of the New York Insurance Law and Article 6 or 8 of the New York Vehicle and Traffic Law, then the disagreement shall be settled by such arbitration procedures upon written demand of either the insured or the insurer.

If any person making a claim under the UM endorsement 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 the 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 pursuant to the procedures that follow and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

RULES FOR ARBITRATION IN THE STATE OF NEW YORK OF SUPPLEMENTARY UNINSURED/UNDERINSURED MOTORIST INSURANCE DISPUTES PURSUANT TO POLICIES ISSUED ON OR AFTER OCTOBER 1, 1993, AND UNINSURED MOTORIST INSURANCE DISPUTES PURSUANT TO POLICIES ISSUED OR RENEWED AFTER SEPTEMBER 1, 1996

1. Agreement of the Parties

The parties make these rules a part of their arbitration agreement whenever the policy contains a Supplementary Uninsured Motorist ("SUM") endorsement issued or renewed after October 1, 1993, or whenever the policy contains an Uninsured Motorist ("UM") endorsement issued or renewed after September 1, 1996. These rules and any amendment to them shall apply in the form obtaining when arbitration is initiated, except for any provision that is inconsistent with the arbitration agreement or with applicable law.

2. Administrator and Delegation of Duties

The authority and duties of the American Arbitration Association ("AAA"), delegated to it by the Superintendent of Insurance of the State of New York ("Superintendent"), are prescribed in these rules and may be carried out through such of the AAA's representatives as it may direct.

3. Administration

The AAA may, at its discretion, assign the administration of an arbitration to any of its regional offices within the State of New York.

4. Initiation of Arbitration

All arbitration notices shall be filed in triplicate with the AAA together with a filing fee in the amount of \$250. A copy of the demand for arbitration shall also be sent by the applicant via registered or U.S. certified mail, return receipt requested, or by any other method legally authorized for service of a summons to the claim office of the insurer under whose policy arbitration is sought. The demand shall set forth:

- a. the name, address, and telephone number of the insured person(s) and the filing attorney;
- b. the name, address, and policy number of the policyholder;
- c. the identity and location of the claim office of the insurer, if known; the claim file number, if known; and the name of the individual with whom the claim was discussed;
- d. the date and location of the accident;
- e. the nature of the dispute and the injuries alleged;
- f. amount of policy limits and the amount claimed thereunder;
- g. the amount of the policy limit of the tortfeasor;
- h. the address of the AAA regional office at which copies of the demand are being filed; and,
- i. the effective date of the policy under which the demand is made.

Issues as to coverage or applicable policy limits may be referred to voluntary coverage arbitration by an arbitrator upon the written agreement of all parties. Those 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.

If within twenty (20) days after service of a demand or a notice of intention to arbitrate the insurer moves in court in accordance with Section 7503 of the Civil Practice Law and Rules to contest coverage, applicable policy limits, or the stacking of policy coverage, the AAA will suspend administration until such issues are decided if the application is received by the AAA within thirty (30) calendar days after acknowledgment of the demand. Notwithstanding the aforementioned procedure, the AAA will proceed with administration of the matter at the request of applicant, unless the insurer obtains a court order staying the proceedings.

5. Serving of Notice

With the exception of the demand, which shall be served by registered or U. S. certified mail, return receipt requested, or by any other method legally authorized for the service of a summons, 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 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 has been granted to such party.

To facilitate communication between the parties and the AAA, the parties agree that communications with the AAA via facsimile machines, telexes, telegrams, or other written forms of electronic communication are valid and proper notice under these rules.

6. Change of Claim

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

7. Arbitrators for Hearings Held in the State of New York

All arbitrators are appointed to the panel by, and serve at the pleasure of, the Superintendent. The Superintendent forwards the names of all appointed arbitrators to the AAA and informs the AAA of all additions to and deletions from the panel.

8. Arbitrators for Hearings Held Outside the State of New York

For a hearing that will be held outside the State of New York, the arbitrator shall be a licensed attorney in the state where the hearing is held. Any additional qualifications shall be established by the AAA in consultation with the Department of Insurance on a case-by-case basis.

9. Appointment of Arbitrators to Cases

The AAA will select an arbitrator who will hear the case and will submit the name of the arbitrator to each party to the arbitration. The AAA shall maintain information concerning the professional background of each of the arbitrators and such information shall be available to a party to the arbitration upon request.

No person can serve as an arbitrator in any arbitration in which such person has any financial or personal interest or bias. If a party challenges an arbitrator, the specific grounds for the challenge must be submitted in writing to the AAA, which will solicit comments on said challenge from the other party, shall determine whether the arbitrator shall be disqualified, and shall inform the parties of its decision, which shall be final and binding. If an arbitrator is removed from a case for any reason or is otherwise unable to perform the duties of the office, the AAA will appoint another arbitrator to the case.

10. Oaths

Arbitrators will take an annual oath of office. Arbitrators will require all witnesses to testify under oath or affirm that their statements are true under the penalties of perjury.

11. Time and Place of Arbitration

The arbitration hearing will be held in the arbitrator's office or any other appropriate place selected by the AAA, and, to the extent practicable, within the general locale of the applicant's residence but in no event more than one hundred (100) miles from such residence. The arbitrator will fix the time and date for each hearing. At least thirty (30) calendar days prior to the hearing, the AAA will mail a Notice of Hearing to each party.

12. Communication with the Arbitrator

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

13. Representation at Arbitration

Applicants must either represent themselves or be represented by counsel. An insurance carrier may be represented by counsel or by an authorized W-2 employee of that carrier.

A party intending to be represented by counsel or an authorized W-2 employee must notify the other party and the AAA of the name of their representative at least three (3) 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.

14. Order of Proceedings

A hearing shall be opened 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 applicant 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 arbitrator, for good cause shown, may waive oral hearings upon the written agreement of all parties. If the parties are unable to agree on the procedure, the AAA shall specify a fair and equitable procedure.

15. Adjournments

The arbitrator may, for good cause shown, postpone the hearing upon the request of a party or upon the arbitrator's own initiative.

(a) Each party may cause one adjournment without the payment of an adjournment fee if the adjournment request is received by the AAA more than two (2) business days prior to the scheduled arbitration. There shall be an adjournment fee of \$50 payable to the AAA by the party which requests and obtains a subsequent adjournment, provided the subsequent request for adjournment was made more than two (2) business days prior to the hearing.

(b) Notwithstanding any other section of this rule, a \$100 adjournment fee shall be payable for any adjournment which is caused within two (2) business days prior to the scheduled hearing by the party causing such adjournment. The \$100 adjournment fee will be assessed for all adjournments caused within two (2) business days prior to the scheduled hearing regardless of whether it is the party's first adjournment request or a subsequent request.

16. Record of Proceedings and Interpreters

A stenographic record of the arbitration proceedings shall not be required. However, a 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. The taking of a transcript will cause that transcript to become the official record of the proceeding. The transcript shall be made available to the arbitrator and to the other party for inspection at a time and a place determined by the arbitrator.

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

No person shall serve as an interpreter in any arbitration in which such person has a financial or personal interest. The party hiring the services of an interpreter shall inform the other party and the AAA of the identity of said interpreter at least ten (10) days prior to the scheduled day of hearing when the interpreter will render his or her services. An interpreter shall disclose to the AAA any circumstance likely to create an appearance of bias or that might serve to disqualify such interpreter. Upon receipt of such information, the AAA shall immediately disclose it to the parties. If the parties challenge the interpreter, the specific grounds for the challenge shall be submitted in writing. The AAA shall determine whether the interpreter should be disqualified and shall inform the parties of its decision, which shall be final and binding.

17. Attendance at Hearings

Any person having a direct interest in the arbitration is entitled to attend the hearings. The arbitrator shall have discretion to determine the propriety of the attendance of any other person.

18. Arbitration in the Absence of a Party or a Representative

Unless the law provides to the contrary, the arbitration may proceed in the absence of any party who, after due notice, fails to be present or fails to obtain an adjournment. An award shall not be made in favor of an appearing party solely on the default of another party. The arbitrator shall require the appearing party to submit such evidence as may be required for the making of an award. The arbitrator may require the appearance of a party at the hearing if the arbitrator

determines that the party's appearance is necessary for a fair and just resolution of the dispute and to afford all parties due process.

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 understand and determine the dispute. An arbitrator may subpoena witnesses or documents as authorized by law upon request of any party or upon their own initiative.

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 documents to be submitted to the arbitrator shall be simultaneously transmitted to the other party at least fifteen (15) calendar days prior to the hearing. The arbitrator shall determine whether all parties received such documents prior to the hearing.

If a party to the arbitration intends to introduce a witness, expert witness and/or the treating physician at the hearing, the identity of the witness, expert witness and/or the treating physician must be given to all parties at least fifteen (15) calendar days prior to the hearing.

The expenses of witnesses for either side shall be paid by the party producing such witnesses.

20. Evidence by Affidavits and Posthearing Filing of Documents

The arbitrator may receive and consider the evidence of witnesses by affidavits 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 arbitrator directs that documents are to be submitted to the arbitrator after the hearing, they shall be simultaneously sent to the AAA, for transmittal to the arbitrator, and the other party within the time set by the arbitrator. All parties shall be afforded an opportunity to examine such documents and comment on them.

21. Independent Health Service Consultants

- a. The AAA shall maintain a list of independent health service consultants to review medical evidence upon the request of the arbitrator, who shall specify the areas to be reviewed.
- b. An independent health service consultant shall be selected by the AAA from its list and, to the extent practicable, shall be a specialist in the field requested by the arbitrator. If a medical examination of the insured injured person is requested by the arbitrator, such examination shall be conducted at the health consultant's office, which shall be located in the general locale of the injured person's residence or at a place agreed to by the parties and the consultant.
- c. Within thirty (30) calendar days after review of medical evidence or examination of the injured person, the health service consultant shall submit to the AAA a written report which shall contain the consultant's advisory opinion for consideration by the arbitrator. The AAA shall transmit the report to the arbitrator and the parties.

- d. The independent health service consultant's fee, which shall include a written report, shall be paid by the AAA and its cost shall be charged as an administrative expense of the SUM forum.
- e. No person shall serve as an independent health service consultant in any arbitration in which such person has any financial or personal interest or bias. An independent health service consultant shall disclose to the AAA any circumstance likely to create an appearance of bias or that might serve to disqualify such consultant. Upon receipt of such information, the AAA shall immediately disclose it to the parties. If a party challenges a health service consultant, the specific grounds for the challenge shall be submitted in writing. The AAA shall determine whether the health service consultant should be disqualified and shall inform the parties of its decision, which shall be final and binding. If a health service consultant is removed from a case for any reason or is otherwise unable to perform his or her duties, the AAA shall appoint another health service consultant to the case.

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 record thereof shall be made. 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 another agreement by the parties, upon the closing of the hearing.

23. Reopening of Hearing

The arbitrator may, for good cause, reopen the hearing at any time before the award is made.

24. Waiver of Rules

A 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 its objections in writing shall be deemed to have waived the right to object.

25. Extensions of Time

The arbitrator 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 extensions and its reasons.

26. Time of the Award

The award shall be made and delivered no later than thirty (30) calendar days from the date the hearing is closed. Failure to adhere to this time limit shall not nullify the award.

27. Form and Scope of the Award

The award shall be rendered in writing in a format approved by the Superintendent. The award shall state the issues in dispute and contain the arbitrator's findings and conclusions. The award shall be signed by the arbitrator and shall be transmitted to the parties by the AAA with a copy to the Department of Insurance. The award shall contain a decision on all issues submitted to the arbitrator.

28. Awards upon Settlement

The insurer shall provide the arbitrator with the terms of settlement no later than thirty (30) calendar days following the scheduled date of the hearing.

If the parties settle their dispute during the course of arbitration, the arbitrator shall set forth the terms of the agreed settlement in an award which shall provide that the parties agree that the settlement is final and binding and shall not be subject to review by a court. The award shall be signed by the arbitrator and shall be transmitted to the parties by the AAA, with a copy to the Department of Insurance.

29. Delivery of the Award to Parties

The parties shall accept as delivery of the award the placing of the award or a true copy thereof in the mail addressed to the parties or their designated representatives at their last known addresses, or by any other form of service permitted by law. The AAA shall note on such award or transmittal letter the date of mailing and keep a record of same.

30. Interpretation and Application of Rules

The arbitrator shall interpret and apply these rules insofar as they relate to the arbitrator's powers and duties. All other rules shall be interpreted by the AAA, subject to consultation with and approval of the Superintendent.

31. Exclusion of Liability

Neither the AAA nor any arbitrator in a proceeding under these rules is a necessary party in judicial proceedings relating to the arbitration. The participation of a party in an arbitration proceeding shall be a waiver of any claim against an arbitrator or the AAA for any act or omission in connection with any arbitration conducted under these rules.

32. 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 an arbitration.

33. Return of Filing Fee

An applicant, having paid the filing fee of \$250 referred to in Section 4 of these rules, shall be entitled to a return of the filing fee from the respondent if said applicant receives an award which grants all damages demanded. The arbitrator shall in the award direct the respondent to return

the filing fee to the applicant. There shall be no return of the filing fee under any other circumstances.

34. Financing

The cost of administering the AAA SUM arbitration forum shall be paid annually by insurers to the AAA upon receipt of a statement. This cost shall be allocated among insurers in an equitable manner approved by the Superintendent. This allocation shall, to the extent practicable, be a function of the frequency with which the insurer is named as a respondent in AAA SUM arbitration proceedings.

The amount of filing fees collected by the AAA shall be used to defray the cost of administering the SUM arbitration program as administered by the AAA and shall cause the final accounting to be presented for approval to the Superintendent to be offset by the amount of filing fees so collected.

35. The SUM Optional Arbitration Advisory Committee

The Superintendent shall select an advisory committee to review the operations and the actual cost of all arbitrations under these rules.

Rules, forms, procedures and guides are subject to periodic change and updating.

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