

NEW YORK CODES, RULES AND REGULATIONS

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TITLE 11. INSURANCE DEPARTMENT

CHAPTER III. POLICY AND CERTIFICATE PROVISIONS

SUBCHAPTER B. PROPERTY AND CASUALTY INSURANCE

PART 65. * (REGULATION 68) REGULATIONS IMPLEMENTING THE COMPREHENSIVE MOTOR
VEHICLE INSURANCE REPARATIONS ACT

11 NYCRR § 65.10 (2003)

**§ * 65.10 Mandatory arbitration procedures for insurers, self-insurers and
compensation providers under section 5105 of the Insurance Law**

The following procedures and rules for mandatory arbitration of controversies between insurers, pursuant to the provisions of section 5105 of the Insurance Law, shall apply to insurers, self-insurers and compensation providers. The term insurer as used in this section (except as specified in paragraphs (c)(2) and (f)(1) of this section) shall include both "insurers" and "self-insurers" as those terms are defined in this Part and article 51 of the Insurance Law; and effective with respect to personal injuries sustained on or after December 1, 1977, shall also include the Motor Vehicle Accident Indemnification Corporation (MVAIC) and any company providing insurance pursuant to section 5103(g) of the Insurance Law; and effective with respect to personal injuries sustained on or after July 1, 1978, shall include compensation providers as defined in section 5102(1) of the Insurance Law.

(a) Applicability.

(1) All insurers shall submit controversies arising out of accidents, insured events or occurrences within the jurisdiction of section 5105 or 5221(b) of the Insurance Law to mandatory arbitration, as prescribed in this section. Controversies arising from accidents, insured events or occurrences outside the jurisdiction of section 5105 or 5221(b) may be submitted with the consent of the controverting insurers.

(2) Any determination as to whether an insurer is legally entitled to recovery from another insurer shall be made by an arbitration panel (see paragraph (c)(2) of this section) appointed pursuant to this section. The decision of a majority of an arbitration panel shall be final and binding upon the insurers to the controversy. There shall be no right of rehearing or appeal, but a decision may be corrected as provided in subparagraph (d)(4)(ii) of this section.

(3) Where arbitrating insurers are signators to any insurer arbitration program under which a claim or companion claims would be otherwise subject to the compulsory jurisdiction of such agreements, the jurisdiction of this Part shall be primary. Insurers shall waive their rights to proceed separately under such other arbitration programs and include all claims arising out of the same accident or insured event for disposition by an arbitration panel appointed pursuant to this section.

(4) This section is applicable only to controversies involving insurers.

(5) Other than claims asserted by MVAIC against an insurer, this section shall not apply to any claim for recovery rights to which an insurer in good faith asserts a defense of lack of coverage of an alleged covered person on any grounds, unless specific written consent of mandatory arbitration is obtained from the insurer asserting such defense. Where an insurer asserts a defense of lack of coverage of an alleged covered person on any grounds relating to claims asserted by MVAIC for recovery rights, same shall be subject to mandatory arbitration. However, any controversy between insurers involving the responsibility or the obligation to pay first-party benefits (i.e., priority or payment or sources of payment as provided in section 65.15(j) of this Part) is not considered a coverage question and must be submitted to mandatory arbitration under this section.

(6) This section shall not be construed to create any causes of action or liabilities not existing in law or equity, nor shall this section be construed to abolish any causes of action or liabilities existing in law or equity.

(b) Administration of arbitration.

(1) The arbitration prescribed in this section shall be administered by:
Insurance Arbitration Forums, Inc.
200 White Plains Road
Tarrytown, NY 10591

Insurance Arbitration Forums may:

(i) make appropriate administrative rules for arbitrations;

(ii) select places where arbitration facilities are to be available, and adopt a policy for the selection and appointment of arbitration panels; and

(iii) make appropriate recommendations for equitable apportionment among arbitrating insurers of the operating expenses of this program.

(2) Local arbitration committees.

(i) Members of local arbitration committees shall be appointed by Insurance Arbitration Forums from fulltime salaried representative of insurers, on the basis of their experience and qualifications, and shall serve without compensation.

(ii) Local arbitration committees shall be responsible for the selection of arbitration panels to hear the particular cases.

(c) Selection of arbitrators.

(1) Insurers shall furnish Insurance Arbitration Forums with a list of names, titles and local addresses of all employees who are qualified to act as arbitrators.

(2) The chairman of the local arbitration committee shall designate one disinterested member of such committee to serve as an arbitration panelist in each case. However, an insurer may request a three-member arbitration panel in a specific case. If one or more of the controverting parties is a self-insurer which has requested a three-member panel, then the self-insurer may also request that at least one member of the panel be a disinterested representative of a self-insurer, where such representative is available to serve on the panel.

(3) No one shall serve as an arbitrator on a panel hearing a case in which the insurer represented by the arbitrator is directly or indirectly interested.

(d) Procedure.

(1) Settlements before arbitration. An insurer requesting reimbursement of first-party benefits from another insurer, as provided in section 5105 or 5221(b) of the Insurance Law, shall make such request as soon as reasonably practicable on the prescribed yellow "Inter-Company Reimbursement Notification," Appendix 14, *infra*, with the secretary of the local arbitration committee. As a condition precedent to arbitration, local representatives of involved insurers must make sincere efforts to settle controversies by direct negotiation.

(2) Initiation of arbitration.

(i) The insurer which initiates an arbitration proceeding by filing a request for arbitration shall be known as the "applicant"; and the insurer or insurers against which such controverted claim or issue was asserted shall be known as the "respondent(s)".

(ii) Any insurer against whom a claim is being made by another insurer shall promptly make known its identity.

(iii) An arbitration proceeding may be initiated by the local representative of an applicant by filing four copies of the pink "B-Arbitration Notice," Appendix 14, *infra*, with the secretary of the local arbitration committee. At the same time, three copies of the arbitration notice shall be submitted by the applicant directly to the local representative of the respondent. If there is more than one known respondent in a case, the applicant shall so indicate on the original and all copies of the arbitration notice and send three copies thereof to each respondent. (For filing assessments, see subdivision (e) of this section.)

(iv) Since claim payments may extend over a considerable period of time, insurers may limit the arbitration to the issue of fault. No monetary finding shall be made in such cases unless this issue is presented in a supplemental filing.

(v) Notice by applicants shall set forth the following information:

(a) names of applicant and respondent(s), together with names and addresses of local representatives having supervision over the case in controversy;

- (b) name of respondent's insured, if applicable;
- (c) name and status of injured person;
- (d) claim file numbers of applicant and respondent, if known;
- (e) date and place of alleged accident, loss or other insured event;
- (f) amount of applicant's claim payment to date, and amount of all allocated claim expenses in connection with a priority of coverage situation for which recovery is requested;
- (g) certification that settlement efforts have been unsuccessful;
- (h) brief statement specifying the issues in controversy; and
- (i) signature of applicant's representative and date signed.

(vi) Answers filed by respondents shall set forth the following information:

- (a) supplement or correct, if and as necessary, the information furnished by applicant as to respondent's name, local representative, address, name of insured and file number;
- (b) if there is an objection to arbitration, the grounds on which the objection is based should be fully stated;
- (c) a brief statement of the issues in controversy, if respondent disputes applicant's statement;
- (d) a denial of coverage must be explained under contentions on the pink "B-Arbitration Notice"; and
- (e) signature of respondent's representative and date signed.

(vii) The respondent has 30 days after the applicant's arbitration notice is filed in which to file a written answer. If a respondent fails to submit its answer within 30 days after an applicant files with a committee, it is presumed that the applicant's claim has been denied and the case is ready for hearing on the issues. Failure to file an answer will not operate to delay the arbitration hearing. However, if affirmative defenses are available to the respondent, and are not asserted by answer prior to notice of hearing, the applicant, on request, will be entitled to an adjournment to investigate such affirmative defenses.

(viii) The procedure set out in this subdivision is also applicable to counterclaims or cross claims. The arbitration notice shall clearly indicate that it is submitted as a counterclaim or cross claim, and the original arbitration case to which it pertains shall be plainly identified. Unless a counterclaim or cross claim is filed by a respondent and heard with the original arbitration case, the respondent with the counterclaim or cross claim is thereafter precluded from pursuing its claim against the applicant in the original arbitration, unless it can be shown that first notice of a specific claim for first-party benefits was received less than five business days prior to the date of hearing of the original arbitration.

(3) Hearings.

(i) Cases shall be scheduled for hearing by the arbitration panel at the earliest practicable date after the secretary has received the essential facts and contentions from the applicants and respondents.

(ii) The hearing date shall be determined by the chairman of the arbitration panel, and one or more cases may be considered at any scheduled hearing.

(iii) Representatives of applicants and respondents shall be notified by the secretary of the time and place of a scheduled hearing at least two weeks in advance of the hearing date. Notice of hearing shall be sent by certified mail, return receipt requested, to any respondent which has not filed a written answer, where the damages by the applicant exceed \$ 2,500. For no-answer cases involving \$ 2,500 or less, the respondents' hearing notice will be sent under the certificate of mailing procedures of the United States Postal Service.

(iv) Adjournments may be granted for cause by the chairman of the local arbitration committee or his designee.

(v) Evidence which applicants and respondents intend to submit in support of their allegations shall be made available for examination by the arbitrators and opposing parties at the hearing. Copies of documentary evidence will be accepted with the same value as the original documents, provided the original documents are available upon request if a question is raised at the hearing as to the authenticity or legibility of the copy. If one of the parties fails to produce evidence at a scheduled arbitration hearing, after due notice thereof, the arbitrators may, at their discretion, consider the information provided in the arbitration notice by such party and render a decision accordingly.

(vi) Procedure at arbitration panel hearings shall be informal. Applicants and respondents shall present the facts of their respective cases in a brief, frank and direct manner.

(vii) The arbitration panel may require that applicants or respondents submit briefs of the law involved.

(viii) An applicant or respondent may present such witnesses as it deems necessarily at an arbitration hearing if it notified the other parties of its intention sufficiently in advance of the hearing date to permit them to also present witnesses.

(ix) Applicants and respondents may be represented at arbitration hearings by members of their staff or by anyone employed or retained by them.

(x) Documentary evidence submitted by applicants and respondents shall be left with the arbitrators for their consideration while reaching a decision.

(xi) Any representatives of applicants or respondents attending an arbitration hearing shall withdraw after presentation of their cases and may not be present while the arbitrators are considering their decision.

(4) Decisions.

(i) An arbitration panel may, upon its own initiative, render a decision in favor of a respondent without production of evidence by such respondent, if the panel unanimously agrees following presentation of the applicant's evidence that such applicant has not made out a prima facie case.

(ii) A decision of an arbitration panel on issues of fact or law is final and binding, with no right of rehearing or appeal. However, this provision does not preclude a local arbitration committee's chairman from correcting a clerical or typographical error on the part of a local arbitration committee's staff, provided it is called to the local arbitration committee's attention in writing by one of the arbitrating insurers within 30 days after publication of the decision; or, if recognized by the local arbitration committee without notice from the arbitrating insurers, within 30 days after publication of the decision; provided further, that the correction be made in either event within 60 days after publication of the decision.

(iii) The law of the locality in which the accident, insured event, or loss occurred will control the decision on questions of fault. A finding as to the amount of damages in issue shall be based upon the facts presented to the arbitrators.

(iv) The amount paid by an insurer shall not be at issue unless pleaded specifically.

(v) Decisions of the arbitrators shall be promptly rendered after consideration of the case, and any evidence submitted by the parties shall be returned promptly to them.

(vi) The arbitrators shall prepare a written decision in each case, copies of which shall be distributed by the secretary of the local arbitration committee as follows: one copy will be retained by the arbitration panel secretary; one copy shall be furnished to each insurer involved in the arbitration; and the original shall be furnished to Insurance Arbitration Forums.

(vii) The decisions of the arbitration panel shall include the following minimum information:

(a) date of hearing;

(b) names of panel members;

(c) designation of prevailing party, or parties, and the amount of the award, if any;

(d) brief statement of the basis for the finding, such as lack of proof, contributing negligence, apportionment of negligence or other controlling principles of law; and

(e) signature of the arbitrator who prepared the decision, and the date.

(viii) Decisions of an arbitration panel shall be complied with as soon as practicable. Any unwarranted delay on the part of any insurer concerned should be reported to Insurance Arbitration Forums by the prevailing party.

(ix) If the decision concerns only the issue of coverage priority, and the applicant is the prevailing party, the respondent held responsible for the first-party benefits will be required to assume further handling of the claim at once, and will immediately reimburse the applicant for the amount of benefits paid to date, and any allocated claims expenses paid in conjunction with the handling of the claim. The applicant will continue payments to the eligible injured person until respondent has assumed obligation for the claim.

(5) Miscellaneous.

(i) Submission of a case to arbitration shall have the same force and effect as to insurers with regard to the applicable tort statute of limitations as if litigation has been instituted; further, if a matter within the compulsory provisions of this section is inadvertently placed in litigation, the discontinuance of such litigation for the purpose of arbitration will be considered as a submission to arbitration with regard to the applicable tort statute of limitations as of the date such litigation was instituted. If the issue of coverage is in litigation, the statute of limitations shall be tolled pending final determination of such issue.

(ii)

(a) The hearing of a matter for recovery of mandatory first-party benefits pending before an arbitration panel under

this section will not be deferred because of pending claims or suits arising out of the same accident, occurrence or insured event, except upon the written request of one of the parties to the arbitration. Such request must be sent to the committee secretary and to all other parties in the dispute.

(b) One year from the date of filing with a local committee, a deferred case shall be set for a hearing and heard, unless continuance of the deferment is requested in writing, as provided in clause (a) of this subparagraph.

(c) Where a request for a deferment is made, the good faith of the request may be challenged by the adverse party. Where a challenge is made, a hearing will be held to determine the good faith of the deferment request. If sustained by the panel, the case will be continued on the committee's docket in a deferred status for one year, after which it will be placed on the active hearing docket and heard unless the committee receives an additional written request for continuance of the deferment for another year.

(d) Where an additional written request is received, the adverse party may again challenge the good faith of the requested deferment, in which event the good faith of the request will again be reviewed by the hearing panel. If the challenge is unsuccessful, the deferment will be renewed for another year.

(e) If the good faith of the deferment request is challenged and the challenge is sustained, the panel at the same hearing will proceed to decide the issues of liability and/or damages. Where the deferment request is sustained and thereby requires the rescheduling of another hearing date for the open issue, the party requesting the deferment will be charged an assessment for each deferment granted equal to but not more than the case filing assessment charge incurred by the filing party in the original filing.

(iii) Where there are companion claims arising out of the same accident, each of which would be, or is, subject to the compulsory jurisdiction of this section, only one filing is necessary to determine the issue of fault as to the drivers of the respective vehicles. A panel's decision on this issue is res judicata on the fault issue in all companion matters involving the same insurers within the jurisdiction of this section, except as to special defenses arising in the companion claim. In companion claims arising out of the same accident, the panel's decision is res judicata on the liability issue of the drivers of the respective vehicles. A decision of a panel on the liability issue is conclusive only to the controversy in the claim submitted to the panel by the same parties and has no legal effect on any other claim or suit arising out of the same accident or occurrence between different parties. A decision of a panel on issues other than liability is not res judicata as to the same or similar

issues in companion claims or any other claim between the arbitrating parties.

(iv) Claims of insurers who are coproviders of benefits to persons injured in the same accident and who are subject to the jurisdiction of section 5105 or 5221(b) of the Insurance Law may be heard as companion claims under a single filing by the same panel, if all such insurers have initiated arbitration under procedures outlined under paragraph (2) of this subdivision, or have received timely notice of initiation of arbitration by another coprovider insurer through receipt of a copy of the arbitration notice. The panel may at its option defer the hearing when in its opinion there is reasonable doubt whether a coprovider insurer received timely notice. A respondent may request deferment for similar reason, under the authority of clause (a) of subparagraph (ii) of this paragraph. Any decision in favor of a respondent shall not be res judicata as to a coprovider insurer in those instances where, as required under this subparagraph, such coprovider insurer has not, by filing or through receiving timely notice, been made a party to or given an opportunity to participate in the arbitration proceeding.

(e) Filing assessments.

(1) Insurance Arbitration Forms, by resolution, will recommend the filing assessment for the use of local arbitration facilities. The expenses of the program shall be periodically reviewed by the loss transfer advisory committee (see subdivision (f) of this section), which shall consider the recommendations of Insurance Arbitration Forums and prescribe from time to time arbitration assessments.

(2) The obligation for the prescribed filing assessment is incurred by the applicant or by a respondent filing a counterclaim, upon filing, but payment to Insurance Arbitration Forums is deferred until the case is closed, either through hearing, settlement or withdrawal prior to hearing. There are no exceptions to an insurer's obligation to pay the filing assessment.

(3) The secretary of Insurance Arbitration Forums is the custodian of the assessment charges collected and shall make expenditures therefrom to defray such arbitration expenses as may be authorized by Insurance Arbitration Forums.

(4) The secretary of Insurance Arbitration Forums will submit reports on assessments collected and disbursed during such period as may be considered desirable by Insurance Arbitration Forums.

(f) Loss transfer advisory committee.

(1) The superintendent shall select a loss transfer advisory committee composed of 14 members, of which eight shall represent motor vehicle insurers, three shall represent motor vehicle self-insurers, two shall represent compensation providers and one shall represent the Motor Vehicle Accident Indemnification Corporation.

(2) The loss transfer advisory committee shall:

(i) regularly review the operations, procedures, rules, expenditures, assessments and all other relevant matters involving settlements between insurers in accordance with the requirements of section 5105 or 5221(b) of the Insurance Law;

(ii) review the operations of Insurance Arbitration Forums insofar as they relate to the arbitration prescribed in this section; and

(iii) report its findings, conclusions and recommendations directly to the superintendent annually and at such other intervals as it deems appropriate.

* NB Reinstated effective February 1, 2000 per *Medical Society of New York v. Neil D. Levin as Superintendent of Insurance*, 712 NY2d 745 (Supreme Court, New York County).

Section statutory authority: Insurance Law, §5105, §A51, §5103, §5102, §5221
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