

# **KENTUCKY INSURANCE ARBITRATION ASSOCIATION**

## **AUTOMOBILE ACCIDENT REPARATIONS ARBITRATION RULES**

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## **AUTOMOBILE ACCIDENT REPARATIONS ARBITRATION RULES**

The Rules hereinafter set forth are promulgated pursuant to the authority of KRS 304.39-290.

As a condition precedent to arbitration, local representatives of involved reparation obligors must make good faith attempts to settle controversies by direct negotiation.

### **GENERAL**

1. The Arbitration Plan of Operation & Rules shall be applicable to accidents, insured events of losses under the jurisdiction of the Kentucky Motor Vehicle Reparation Act giving subrogation recovery rights to reparation obligors for payments or benefits paid to insureds or third parties under such statute.
2. Representatives of reparation obligors are entitled to copies of the Arbitration Plan of Operation and the Arbitration Rules.
3. The Arbitration Plan of Operation shall not be construed to create any causes of action or liabilities not existing in law or equity.
4. The Arbitration Plan of Operation is applicable to controversies involving reparation obligors and persons having the rights and obligations of a reparation obligor. The interests of other persons may not be arbitrated under the Plan. The fact that other persons may be insureds of reparation obligors does not alter this rule.
5. In arbitration proceedings and practice, the reparation obligor which initiates the proceedings by filing a request for arbitration shall be known as the “applicant” and the reparation obligor or reparation obligors against which such controverted claim or issue was asserted shall be known as “respondent(s)”.
6. Any reparation obligor against whom a claim is being made shall promptly make known its identity.

7. Submission of a case to arbitration under the Plan shall have the same force and effect as to reparation obligors with regards to the applicable Statute of Limitations as if litigation has been instituted.
8. The hearing of a matter pending before the arbitration panel under this Plan will be deferred when a reparation obligor provides written notice of the existence of pending claims or suits arising out of the same accident, occurrence or insured event, and further specifically request a deferment in writing. Otherwise the matter will proceed to a hearing and the controverting parties will be deemed to have waived any right they may have had to deferment. The decision of the arbitrator(s) shall be deemed conclusive between the controverting parties as to the issues of liability and damages with respect to the claims heard, and it will not, except as provided in Article 4F of the Plan of Operations, be subject to or affected by any prior court decision, unless the claims had been asserted and adjudicated in the action by way of intervention as provided in KRS 304-39-070(3), or by any subsequent court decision which directly or indirectly involves the same claims.
9. A party may at any time challenge deferment by providing notice in writing. Upon a determination by the Arbitration Panel that good cause for deferment does not or no longer exists, the Association's Panel Secretary shall schedule a hearing in accordance with these Rules.
10. Deferment of a hearing under Rule 8, generally, does not relieve a respondent reparation obligor from the obligation to file its written answer asserting therein any affirmative defense once the subject case has been removed from a deferred status. All parties have the responsibility to determine correct current addresses, when requesting deferment removal.
11. Where there are companion claims arising out of the same accident each of which would be, or is subject to this Plan, only one filing is necessary to determine the issue of liability as to the drivers of the respective vehicles. A decision on the issue is res judicata on the liability issue in all companion matters involving the same reparation obligors under this Plan, except as to special defenses arising in companion claim or suit.

#### **ARBITRATORS**

1. Arbitrators are selected under Article 2 sub paragraph 3 of the Plan of Operations.
2. The Arbitration Panel shall appoint a Secretary who need not be a member of the Arbitration Plan.

3. The Secretary of the Panel shall designate one disinterested member of the Plan to serve as an Arbitrator in each case. However, either of the controverting parties may request a hearing by three members of the Arbitration Panel in a specific case, only if the damages exceed \$10,000.
  - (a) No one shall serve as an Arbitrator hearing a case in which the obligor represented by the Arbitrator is directly or indirectly interested.
4. If Arbitration Panel members are disqualified because of their reparation obligor's interest in a particular case, the Secretary of the Panel is authorized to appoint temporary substitutes.
5. The Arbitration Association is to select the place or places where arbitration facilities are to be available.

## **JURISDICTION**

1. Arbitration under the Plan applies to controversies arising out of motor vehicle accidents within the jurisdiction of KRS 304 Sub-Title 39.

## **FILING FEES**

1. The Board of Directors of the Association shall prescribe filing fees, which shall be no less than \$25.00. An Applicant or Respondent who requests a hearing by a panel of three members shall pay a filing fee of \$100.00.
2. The obligation for the prescribed filing fee is incurred upon filing by the Applicant and by the Respondent who files a counterclaim. The filing fee shall be made payable to Kentucky Insurance Arbitration Association. Filing fees paid to the Association shall not be refunded.
3. The Association's Secretary is the custodian of the filing fees collected and shall make expenditures there from to defray such arbitration expenses as may be authorized by the Association.
4. The Association's Secretary will submit reports on fees collected and disbursed during such period as may be considered desirable by the Association.

## PROCEDURE

1. An arbitration proceeding is commenced by a reparation obligor filing an “Arbitration Notice” with the Association’s Arbitration Panel Secretary. At the same time a copy of the “Arbitration Notice” and supporting documentation are to be submitted by the applicant directly to the respondent. If there is more than one respondent reparation obligor in a case the Applicant shall so indicate on the original and all copies of the “Arbitration Notice” and send a copy thereof to each respondent reparation obligor and a copy to the Secretary. In the event an “Arbitration Notice” (application) is obsolete, not one prescribed by the Board of Directors or incomplete, the reparations obligor has 30 days from date of notice by the Association to correct the deficiency,
2. Notice by applicants shall set forth the following information:
  - (a) Names of applicant and respondent reparation obligors together with names and addresses of persons having supervision of the case in controversy.
  - (b) Name and address of respondent reparation obligor’s insured.
  - (c) Claim file numbers of applicant and respondent, if known.
  - (d) Date and place of alleged accident, loss or other insured events.
  - (e) Amount of reparation obligors claim payment.
  - (f) Certification that settlement efforts have been unsuccessful.
  - (g) Brief statement of allegation solely as to the issue in controversy.
  - (h) Signature of applicant’s representative and date signed.
3. Answers filed by respondent shall be made on Association form as received from Applicant. One copy to Secretary and one copy to Applicant with a copy of all supporting documents.
  - (a) Supplement, if and as necessary, the information furnished by applicant as to respondent company’s name, address, name of insured, file number or kind of policy coverage.
  - (b) Whether there is an objection to arbitration. If so, the grounds on which the objection is based should be fully stated.

- (c) Brief statement of allegations as to the issue in controversy.
  - (d) Personal Representation will not be allowed when an answer has not been filed as required above.
  - (e) Signature of respondent's representative and date signed.
4. The respondent has thirty days after the applicant's filing in which to file a written answer. If a respondent fails to submit his/her answer within thirty days after an applicant files, 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.
  5. The procedure set out in the preceding paragraphs of this section is also applicable to counterclaims. The "Arbitration Notice" should clearly indicate that it is submitted as a counterclaim and the original arbitration case to which it pertains shall be plainly identified. Unless a counterclaim is filed by a respondent and heard with the original arbitration case, the respondent with the counterclaim is thereafter precluded from pursuing his/her claim against the adverse reparation obligor.
  6. In the event settlement of a case is effected directly between the parties after it has been referred for arbitration, the applicant shall forthwith notify the Secretary of such settlement and withdraw the case from arbitration.
  7. The Secretary of the Arbitration Panel will maintain a Docket of all cases filed with the Association and will maintain a record of all filing assessments. The Secretary will submit quarterly (March 31, June 30, September 30 and December 31) a report to the Board of Directors of all cases filed, cases heard and cases pending. The report will also show the amount of filing assessments received and the expenditures made.
  8. If both Applicant and Respondent answer in the affirmative to the inquiry, "If not, do you waive formal notice of hearing?" on the Arbitration Statement form, the Secretary of the Arbitration Panel may set the matter for hearing as soon as the files of the respective parties have been received without any further notice to the parties as to the date and place of such hearing. If the files are not submitted within thirty days after the answer is filed, the matter will be processed for hearing in accordance with the procedures required where notice is not waived.

9. Since claim payments may extend over a considerable period of time, the Arbitrator upon motion of either obligor, may by agreement limit the Arbitration to the issue of fault. No monetary finding shall be made in such cases unless this issue is presented in an amended filing.

#### **HEARING AND EVIDENCE**

1. When the Association's Arbitration Panel Secretary has received the essential facts and allegations from the controverting parties, the issue in the case shall be scheduled for hearing at the earliest practicable date.
2. Hearing date and place of hearing shall be determined by the Association's Arbitration Panel Secretary and one or more cases may be considered at the scheduled hearing.
3. The controverting parties shall be notified by the Association's Arbitration Panel Secretary of the time and place of a scheduled hearing at least 15 days in advance of the hearing date. Notice of hearing shall be sent by certified mail, return receipt requested or by priority mail with proof of delivery, to any respondent which has not filed a written answer. If a written response is not received by the Plan seven days prior to the hearing it will not be considered. Additional documentation by either party must be submitted 7 days prior to the hearing.
4. Requests for continuances must be received 10 days prior to the scheduled hearing. Continuances may be granted at the sole discretion of the secretary for good cause shown.
5. Evidence which controverting parties desire to submit in support of their allegations shall be made available for examination at the hearing. Such evidence may also be examined by the opposing parties at the hearing. The Arbitrator may at his discretion grant additional time to present rebuttal evidence. If one of the controverting parties fails to produce evidence at a scheduled arbitration hearing, after due notice thereof, the arbitrators may, at their discretion, consider the information in the "Arbitration Notice" of such party and render a decision accordingly.
6. Procedure at Arbitration Hearings shall be informal. Controverting parties are expected to present the fact of their respective cases in a brief, frank and direct manner.
7. The controverting parties may submit for consideration to the arbitrators, briefs of the law involved.
8. Upon 10 days notice to the adverse party and the Association's Panel Secretary, witnesses may be present at an Arbitration Hearing.

9. Upon 10 days notice to the adverse party and the Association's Panel Secretary, parties may be represented at an arbitration hearing by any member of their staffs, an adjuster or by attorneys.
10. Any evidence submitted shall be left with the Arbitrators.
11. The arbitrator shall be the judge of the relevancy and materiality of the evidence offered and conformity to legal rules of evidence shall not be necessary.
12. Original documents are not required and electronic or duplicate copies, properly authenticated where necessary, will be acceptable.
13. Documents which will be considered as evidence include but are not limited to the following: Statements (handwritten or transcribed recordings), police reports, photographs, coroner's reports, medical reports and any other investigative material.
14. Any evidence including hearsay offered by the parties will be received and considered, but the arbitrator will give it only such weight as he deems appropriate.
15. Additional evidence deemed necessary, by the arbitrator, to reach a determination of the dispute shall be produced by the parties.
16. If representatives of controverting parties attend an arbitration hearing, they must withdraw after presentation of their cases and may not be present while arbitrators are considering their decision.
17. Formal rules of evidence shall not apply unless requested by one of the parties and upon notice to the other party.

## **DECISIONS**

1. If a party fails to meet a burden of proof, a decision may be rendered against him without production of evidence by the other party.
2. Decisions of the Arbitrators are final (except as otherwise provided in the Plan).
3. A finding as to the amount of damages in issue shall be based upon the facts presented to the arbitrator.
4. The amount paid shall not be at issue unless pleaded specifically.

5. Decisions of the arbitrators shall be promptly rendered after consideration of the case.
6. The arbitrators shall prepare a written decision in each case, copies of which shall be distributed by the Association's Arbitration Panel Secretary as follows. The original will be retained by the Association's Panel Secretary, and one copy shall be furnished to each party involved in the arbitration.
7. The decisions of the Arbitrators shall include the following minimum information:
  - (a) Date and place of hearing.
  - (b) Names of the Arbitrator or Arbitrators.
  - (c) Names of applicant and respondent reparation obligors and names of their respective insureds.
  - (d) Names of respective controverting party representatives, if any, attending the hearing.
  - (e) Brief description of the claim or controversy and amount involved therein.
  - (f) Name of controverting reparation obligor in whose favor an award is rendered and the amount thereof.
  - (g) Findings of fact and conclusions of law.
  - (h) Signature of the Arbitrator.
8. Decisions shall be complied with as soon as practicable. Any unwarranted delay on the part of the parties concerned should be reported to the Association's Arbitration Panel Secretary by the prevailing party.