

# Rules for Arbitration

Commonwealth Mediation and Conciliation, Inc. (CMCI) has rules for both mediation and arbitration. It is the duty of the parties to be familiar with the rules prior to the commencement of any hearing before a CMCI neutral.

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## 1. Agreement of Parties

The parties make these rules a part of their arbitration agreement whenever submitting a dispute to Commonwealth Mediation and Conciliation, Inc. (CMCI) for arbitration. These rules and any amendment of them shall apply in the form in effect 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. Administration and Delegation of Duties

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

## 3. Initiation under an Arbitration

Provision in an Insurance Policy Arbitration shall be initiated by filing a written Demand for Arbitration (see CMCI Form 1). 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 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 location of the accident; (5) nature of dispute and injuries alleged; (6) amount of uninsured-motorist policy limits and the amount claimed thereunder; and (7) address of the CMCI office at which copies of the demand are being filed. CMCI will acknowledge receipt of the demand to all parties. If, within twenty calendar days after acknowledgment of the demand by CMCI, 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 CMCI. 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, 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

twenty calendar days after acknowledgment of the demand by CMCI, or (3) a court order staying arbitration of the case, CMCI will proceed with the administration of the case.

#### **4. Initiation under a Submission**

Parties to any dispute may commence an arbitration under these rules by filing two copies of a written submission to arbitrate under these rules to CMCI, setting forth the information specified in Rule 3. (See CMCI Forms 2 & 3.)

#### **5. Change of Claim**

If any party desires to make any new or different claim, such claim shall be made in writing and filed with CMCI 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. Time and Place**

CMCI shall fix the time and place for each hearing. CMCI shall mail to each party notice thereof at least twenty calendar days in advance, unless the parties by mutual agreement waive such notice or modify the terms thereof.

#### **7. Designation of Arbitrator**

Unless applicable law or the agreement of the parties provides otherwise, the dispute shall be determined by one Arbitrator. CMCI will submit a list of no fewer than nine Arbitrators from which each party shall have the right to strike up to three names on a peremptory basis. The parties shall rank the remaining arbitrators in their order of preference. CMCI will appoint the Arbitrator from among the remaining names.

#### **8. 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 good cause. CMCI 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, CMCI shall appoint a replacement from among those names remaining on the list(s) submitted to the parties. If any appointment cannot be made from the list(s), CMCI shall appoint a replacement.

#### **9. 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 CMCI 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.

## **10. Discovery**

It is the intention of these rules to foster voluntary discovery. All parties are encouraged to provide discovery in accordance with the Federal Rules of Civil Procedure. In the event of any objection to a request for discovery or request for enforcement thereof such requests shall be made in writing to the Arbitrator who shall issue such orders as the Arbitrator shall deem necessary, and said orders shall be binding on all parties. The Arbitrator shall provide for an oral hearing on discovery disputes, when so requested by any party to the arbitration.

## **11. 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 requested 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 the other party for inspection, at a time and place determined by the Arbitrator.

## **12. Interpreters**

Any party wishing an interpreter shall make all arrangements directly with the interpreter and shall be responsible for the costs thereof.

## **13. Attendance at Hearings**

The Arbitrator shall maintain the privacy of the hearings unless the law provides otherwise. Any person having a direct interest in the arbitration is entitled to attend hearings. The Arbitrator shall 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.

## **14. Adjournments**

The Arbitrator may, for good cause, adjourn the hearing upon the request of a party or upon the Arbitrator's own initiative, and shall grant such adjournment when all of the parties agree thereto. Costs may be assessed by the Arbitrator to any or all parties as a condition of an adjournment.

## **15. Oaths**

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.

## **16. Arbitration in the Absence of a Party or Counsel**

Unless the law provides otherwise, 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.

## **17. 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 will, 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, will be received in evidence by the Arbitrator. What weight is given each exhibit is in the sole discretion of the Arbitrator. The parties may, by written agreement, provide for the waiver of oral hearings. If the parties are unable to agree as to the procedure, CMCI shall specify a fair and equitable procedure.

## **18. Inspection or Investigation**

Whenever the Arbitrator deems it necessary to make an inspection or investigation in connection with the arbitration, the Arbitrator shall direct CMCI to advise the parties of such intention. Any party who so desires may be present at such inspection or investigation. In the event that one or both parties are not present at the inspection or investigation, the Arbitrator shall make a verbal or written report to the parties and afford them an opportunity to comment.

## **19. Conservation of Property**

The Arbitrator may issue such orders as may be deemed necessary to safeguard the property which is the subject matter of the arbitration without prejudice to the rights of the parties or to the final determination of the dispute.

## **20. 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 may subpoena witnesses or documents and may do so upon the request of any party or independently. (See Rule 34.) 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. Evidence shall be taken in the presence of the Arbitrator and 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, medical bill or other medical record as evidence may do so at the hearing. Rebuttal medical evidence may also be offered at the hearing.

## **21. Evidence by Affidavit**

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.

## **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. If briefs or other documents are to be filed, the hearing shall be declared closed as of the date set by the Arbitrator for the receipt of briefs or other documents.

## **23. Post Hearing**

**Filing of Documents** 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 CMCI for transmission to the Arbitrator. All parties shall be afforded an opportunity to examine such documents.

## **24. Reopening of Hearing**

The hearing may be reopened by the Arbitrator, or upon application of a party, at any time before the award is made.

## **25. 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.

## **26. Extensions of Time**

The parties may modify any period of time by mutual agreement. CMCI may for good cause extend any period of time established by these rules. CMCI shall notify the parties of any such extension and its reason therefore.

## **27. Serving of Notice (a)**

With the exception of the demand, which shall be served by U.S. 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, provided that reasonable opportunity to be heard with regard thereto has been granted to such party. (b) The parties agree that communications received from each other or CMCI via facsimile machine, telex,

telegram, or other written forms of electronic communication are valid and proper notice under these rules.

## **28. 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 CMCI for transmission to the Arbitrator.

## **29. Time of Award**

The Arbitrator shall render the award promptly and, unless otherwise agreed by the parties or specified by law, no later than twenty 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.

## **30. Form of Award**

The award shall be in writing and shall be signed by the Arbitrator. It shall be executed in the manner required by law, if any.

## **31. Scope of Award (a)**

**Insurance Claims** 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 Rule 3 above. (b) **On Submission by Agreement** The Arbitrator shall render a decision and make an award within the parameters of the submission of the parties.

## **32. 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.

## **33. 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.

## **34. Expenses**

The expenses of witnesses and documents 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 CMCI 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 both 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.

### **35. Reconsideration**

Any party may apply for reconsideration, modification or correction of any award providing that such application is made in writing within 20 days of the award and served on CMCI and all other interested parties. The Arbitrator may hold a hearing on said application if in the Arbitrator's judgment a hearing is required, or may make a judgment on the written application. The decision of the Arbitrator on any such application shall be final and binding on all the parties.

### **36. Applications to Court and Exclusion of Liability (a)**

No judicial proceeding by a party relating to the subject matter of the arbitration shall be deemed a waiver of the party's right to arbitrate. (b) Neither CMCI nor any Arbitrator in a proceeding under these rules is a necessary party in judicial proceedings relating to the arbitration. (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 CMCI nor any Arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these rules.

### **37. Release of Documents for Judicial Proceedings**

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

### **38. Interpretation and Application of Rules**

The Arbitrator shall interpret and apply these rules insofar as they relate to the Arbitrator's powers and duties.

### **39. High-Low Arbitration**

In any matter submitted for Arbitration the parties may by agreement limit the range of any award made by the Arbitrator. Such Arbitration will be known as a high-low arbitration. The agreement for a high-low arbitration shall be in writing and be signed by the parties or their representatives. The agreement shall contain the minimum amount of any award (the low) and the maximum amount of any award (the high). (See CMCI Forms 4 & 5.)