

# NAMIC **ARBITRATION**



## RULE BOOK



For more information about NAMIC Arbitration please visit [arbitration.namic.org](http://arbitration.namic.org) or contact:

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# TABLE OF CONTENTS

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<b>NAMIC Arbitration Program</b> .....	<b>2</b>
Background .....	2
Jurisdiction .....	2
Filing Fee/Schedule .....	2
Objectives .....	2
Applicable Rules.....	2
Disputes/Arbitrability .....	3
Scope .....	3
Withdrawal of Signatories From The Agreement.....	3
Program Fees and Expenses .....	3
Appointment of Arbitrator and Arbitrator Qualifications.....	3
Alternate Arbitrators.....	4
Rules Amendment.....	4
<b>Procedural and Jurisdictional Rules</b> .....	<b>5</b>
Arbitration of Claims—Procedures .....	5
Special Arbitration.....	7
Meetings.....	7
Amendments .....	7
Arbitration Procedures/Applicable Law .....	8
<b>The Signature Agreement</b> .....	<b>8</b>
Arbitration Agreement (Signatory Agreement).....	8
Scope, Effect and Acceptance .....	8
The Arbitration Committee: Rules and Duties.....	8
Procedural and Jurisdictional Rules .....	9
Petition .....	11
Response and Counter-Petition .....	11
Dispute Determination .....	12
Damages .....	12
Bailment.....	12
Comparative Negligence.....	12
Third Party Contribution .....	13
Statute of Limitations .....	13
Deferment or Stay.....	13
Releases .....	13
Binding Award.....	13
Retention of Records .....	13
Hold Harmless, Indemnity and Miscellaneous Provisions .....	14
<b>Arbitration Checklist</b> .....	<b>15</b>
<b>Some Things to Remember</b> .....	<b>16</b>

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# NAMIC ARBITRATION

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## NAMIC ARBITRATION PROGRAM

### BACKGROUND

The National Association of Mutual Insurance Companies (NAMIC) is an insurance company trade association with members located throughout the United States and Canada. Any property/casualty insurance company may participate in the NAMIC Arbitration Program (Program) by signing the NAMIC Arbitration Agreement (Agreement), thereby agreeing to resolve by binding arbitration certain subrogation claims and disputes (Disputes are defined herein and in the Agreement) rather than through the judicial system. For avoidance of doubt, Disputes include all affirmative claims, disputes and liabilities by a Petitioner/Claimant and Counter-Claims by a Respondent/Counter-Petitioner. By executing and agreeing to be bound to the Agreement, you agree to be bound to these Arbitration Procedural and Jurisdictional Rules (Rules).

### 1. JURISDICTION

The NAMIC Committee (Committee) exercises automatic nationwide jurisdiction over any disputes, claims or liabilities arising from damage to or by motor vehicles or livestock in which insurance companies who have signed the Agreement are involved as a Claimant, Respondent or Counter-Claimant (Disputes). The jurisdictional limit for Disputes per party shall not exceed the aggregate monetary amount of U.S. \$100,000. The Parties may also submit other claims or Disputes including those that may exceed this jurisdictional monetary limit, by written consent subject to NAMIC's agreement, in its discretion, to host arbitration of the claims or Disputes.

### 2. FILING FEE/SCHEDULE

Filing fees include \$120.00 by the Claimant initiating arbitration, and a \$120.00 fee for any Respondent company pursuing a counterclaim due and payable at the time the counterclaim is submitted. Filing fees and counter-filing fees are non-refundable, even if the Dispute is withdrawn or settled prior to hearing. Checks for fees should be made payable to NAMIC Service Corporation.

### 3. OBJECTIVES

The objective of the Agreement and these Rules is to promote the cost effective, final and expeditious resolution of Disputes by binding arbitration rather than by litigation. Each party must sign and agree to be bound by the Agreement and these Rules.

### 4. APPLICABLE RULES

Each company that signs the Agreement and agrees to be bound by the Agreement and these Rules is referred to as a Signatory, and collectively as Signatories. These Rules shall apply to all Disputes arbitrated under the Agreement or otherwise submitted for binding arbitration. The Agreement is attached hereto as Appendix A and is incorporated by reference into these Rules. (The Agreement and these Rules may be modified by NAMIC at its discretion as set forth below.)

## 5. DISPUTES/ARBITRABILITY

All Disputes shall be arbitrated pursuant to these Rules and Agreement. The issue of arbitrability shall be decided exclusively by the Arbitrator. No class or consolidated claims shall be accepted for arbitration.

## 6. SCOPE

Any property/casualty insurance company may become a Signatory by signing the Agreement, which shall be filed with the Arbitration Administrator. The effective date for participation in an arbitration under these Rules shall be thirty (30) days after the signed Agreement is received by NAMIC. Each Signatory shall be bound by the decisions of the Committee and the Arbitrator approved by the Committee in all Disputes that are submitted for binding arbitration on or after the effective date. Disputes that are in litigation on the effective date may be dismissed and submitted to the Committee only upon the written agreement of both Signatories. Unless litigation claims are dismissed or stayed, NAMIC will not assert jurisdiction to administer the Dispute. The Arbitration Administrator shall make available to all Signatory companies a list of current Signatories to the Agreement on the NAMIC website, as well as a list of all potential Arbitrators that may decide Disputes.

## 7. WITHDRAWAL OF SIGNATORIES FROM THE AGREEMENT

Any Signatory may withdraw from the Agreement and the requisite arbitration under the Agreement by filing a written notice of withdrawal from the Agreement with the Arbitration Administrator. The effective date of withdrawal shall be ninety (90) days after written notice of withdrawal. Signatories withdrawing from the Agreement are bound by the Agreement in the case of Disputes in which the date of loss occurs before the withdrawal becomes effective.

## 8. PROGRAM FEES AND EXPENSES

An annual subscription fee may be charged to Signatory companies in an amount determined by the Board of Directors of the NAMIC Property/Casualty Conference (Board) to administer the arbitration program. The Board may provide for all or a portion of the Program's expense to be assumed by the Signatory companies as a whole, or by the Signatory companies submitting claims for arbitration, which may include a change in the filing fee. If the Board takes such action, it shall not become effective until after (30) days notice to the Signatory companies. All fees and expenses shall be set or modified by the Board. A Signatory may not submit a Dispute for arbitration unless all fees it owes are paid in full.

## 9. APPOINTMENT OF ARBITRATOR AND ARBITRATOR QUALIFICATIONS

The Arbitration Administrator shall be the Secretary of the NAMIC Arbitration Committee and shall keep its docket. The Arbitration Administrator shall provide every Signatory with a list of the regular members of the Committee who shall act as an independent arbitrator (Arbitrator) and who will serve until the next annual meeting. Upon receipt of a Petition, the Arbitration Administrator with the approval of the Committee (said approval shall not be unreasonably withheld) shall appoint a sole independent Arbitrator to decide each Dispute. The Arbitrator shall not be affiliated with either Party and shall have no material conflicts of interest with either Signatory that would prevent a fair and impartial decision. Each Arbitrator will agree to be bound to these Rules and will, in good faith, decide each Dispute consistent with the law and the facts pursuant to these Rules. Each Arbitrator shall confirm in writing that he/she will comply with

# NAMIC **ARBITRATION**

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these Rules; that he/she is free of any material conflict of interest; and is willing and able to act as an independent Arbitrator of the Dispute. The Arbitrator shall not receive compensation for his/her service.

Each Arbitrator agrees to be bound by the ABA Code of Ethics for Arbitrators in Commercial Disputes (2004). Each Arbitrator shall have sufficient background and/or experience to decide Disputes. The minimum qualifications to become an Arbitrator are set forth in Appendix B. The Committee shall consist of at least six (6) representatives of Signatory companies who shall serve a term of two (2) years or until their successors are appointed. The Arbitration Administrator shall invite representatives of Signatory companies to fill vacancies of retiring Committee members. Upon recommendation of the Chairman of the Committee and approval of the Board of Directors, three (3) additional representatives of Signatory companies may be added to the Committee's regular membership when the caseload creates the need.

Any representative of a Signatory company is eligible to serve on the Committee and to act as an Arbitrator, provided that the Arbitrator is in compliance with these Rules, the Committee members represent different subscribing companies, the representative is involved in the claim function of the Signatory company, and the Arbitrator is appointed by the members of the Committee.

If a member of the Committee severs his relationship with the Signatory company he represented when appointed to the Committee, his membership on the Committee shall terminate automatically, and he will be ineligible to attend or participate in any future meetings of the Committee. The Arbitration Administrator shall appoint an eligible representative of a Signatory to serve until the next annual meeting. If a member of the Committee or Arbitrator is unable to serve a full two (2) year term due to death, continued disability, or resignation, the Arbitration Administrator shall appoint an eligible representative of a Signatory to fill the vacancy and to serve until the next annual meeting. If an Arbitrator is so affected during the pendency of an arbitration, the Committee shall replace the Arbitrator with notice to the Signatories.

## 10. ALTERNATE ARBITRATORS

In addition to the regular members of the Arbitration Committee, Alternate Arbitrators shall be available at the call of the Chairman to assist the Committee by accepting assignments and participating in the consideration and determination of arbitration cases. Each Alternate Arbitrator shall be bound by the provisions of these Rules. Alternate Arbitrators shall not, however, be required to serve on the Committee except on call of the Chairman to: (1) substitute for regular members who are unable to serve at any meeting due to illness, ineligibility to participate, or other temporary disability; or (2) assist at any meeting for which the number of cases pending, at the discretion of the Chairman, would create an excessive burden on the regular members of the Committee or cause postponement of pending cases.

Arbitrators whose terms expire each year may automatically be appointed upon retirement from the Committee as Alternate Arbitrators.

## 11. RULES AMENDMENT

The NAMIC Arbitration Committee may amend these Rules at its discretion. Any such Rules, or changes to such Rules, shall be submitted to the Board, if approved, the Arbitration Administrator shall provide notice to Signatories in writing. The amended Rules shall become applicable thirty (30) days after notice.

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## PROCEDURAL AND JURISTICTIONAL RULES

### 12. ARBITRATION OF CLAIMS—PROCEDURES

All Disputes shall be submitted for arbitration by filing the NAS Arbitration Petition and Response Form (Appendix C).

#### **A. Jurisdictional Amount and Jurisdiction**

The jurisdictional limit for all Petitions, Responses and Counterclaims shall not exceed U.S. \$100,000. Disputes in excess of this jurisdictional amount shall not be arbitrated unless agreed to in writing by the Signatories and the Committee. The jurisdiction requirements set forth in the Agreement shall apply to determine if a Dispute is arbitrable.

#### **B. The Petition and Response/Counterclaim**

Any Signatory may become a Petitioner/Claimant and request the arbitration of a Dispute by submitting the Petition Form and any claim file material or documentation supporting such claim and two (2) copies of the petition and contentions form (all such material to be referred to as a Petition) to the Arbitration Administrator (the "Petition"). Upon receipt of a Petition, the Arbitration Administrator shall notify the Signatory against whom the Petition is filed (Respondent) by sending one (1) copy of the Petition to the Respondent and requesting a copy of any claim file material or documentation supporting its position together with two (2) copies of the Respondent's response and contentions (all such material to be referred to as a "Response"). The Respondent's Response shall be filed within thirty (30) days of the due date listed in the cover letter. Respondent shall provide the Committee with its Response and the submission of file material and documentation as set forth in Appendix C.

Should the Respondent need additional time to file a Response, a written request for a one-time thirty (30) day extension of time to file a Response may be made. This request must be made on or before the initial Response due date. Once a Response is filed, however, no extension will be allowed absent exceptional circumstances. Responses postmarked after the Response date communicated by the Arbitration Administrator will not be accepted or considered by the Committee.

In the event that the Arbitration Administrator receives Respondent's Response, or if no Response is timely filed, the Arbitration Administrator shall place the case on the docket and the Arbitrator shall be assigned to decide the Dispute. The docket shall be maintained as a calendar of the business of the Committee.

After the initial Petition and/or Response have been filed, (a) either the Petitioner or Respondent may make one (1) more submission of claim file material, evidence, or documentation or legal arguments regarding the case (Supplemental Submission) and (b) the Arbitrator shall be provided with all pleadings and Dispute files. One copy of any such Supplemental Submission must be sent to the Arbitration Administrator and a separate copy must be sent to the opposing Signatory. However, any such Supplemental Submission must be postmarked by the date set forth by the Arbitration Administrator. Supplemental Submissions postmarked after the date set forth by the Arbitration Administrator will not be accepted or considered by the Arbitrator.

## **C. Documentation and Submissions**

The Arbitrator, regardless of when the information is received, will not consider any further submission of claim file material, documentation or legal arguments with the following exceptions:

- a. Additional documentation submitted solely for the purpose of establishing the amount of damage that is in dispute will be accepted up to the day of the scheduled determination.
- b. If the Respondent has made a counterclaim, the Petitioner/Claimant has the opportunity to provide a Response to the counterclaim but must do so by the date set forth by the Arbitration Administrator.

## **D. Stay or Deferment**

Whenever it shall appear to the Arbitrator that there are circumstances that justify deferment or stay of any case, the Committee may defer or stay the case for one year from the date of filing of the Petition. At the time that a deferred or stayed case is ready to be heard by the Arbitrator, either Claimant or Respondent may submit additional arguments or documentation (Additional Submission). One copy of the Additional Submission should be sent to the Arbitration Administrator and a separate copy must be sent to the opposing Signatory. However, any such Additional Submission must be postmarked by the date set forth by the Arbitration Administrator. Any Additional Submission postmarked after the date communicated by the Arbitration Administrator will not be accepted or considered by the Arbitrator. A stay or deferment stays any applicable statutes of limitation or repose.

## **E. Substantive Rules and Decisions**

All Disputes submitted for arbitration shall be considered and decided on the basis of the Petitions, Responses, Supplemental Submissions and additional submissions by the Signatories. There shall be no right to discovery and the Award shall be made based upon the record submitted without a hearing.

The authority of the Arbitrator shall include, without limitation, the arbitration of Disputes paid under automobile policies covering:

- a. Materials damage subrogation claims, including the determination of the amount of damages where that question is specifically pleaded in Respondent's Response;
- b. Subrogation claims created by the payment of claims or benefits to insureds or qualified third parties under the mandatory benefits portion of automobile accident reparations statutes;
- c. Subrogation of medical payments coverage claims where permitted by state law;
- d. By agreement of the Signatories involved, subrogation of excess or voluntary optional benefits provided under any automobile accident reparations statute;
- e. By agreement of the Signatories involved and the Arbitrator, questions of policy coverage involving the rights of the two insurance companies only; and
- f. Third party contribution claims.

The amount paid by Petitioner or Counterclaiming Respondent shall be prima-facie evidence of the amount of loss or damage in the Petition or Counterclaim, and if the decision of the Committee is in favor of the



Petitioner or in the favor of the Counterclaiming Respondent, recovery shall be in the amount claimed unless the company against whom the Petition or Counterclaim is filed proves to the satisfaction of the Committee that the amount paid by the Petitioner or Counterclaiming Respondent is excessive, in which event the Committee shall determine the amount of the recovery by the evidence.

## **F. Determination by the Arbitrator**

The Arbitrator will decide each Dispute based upon the facts and evidence submitted and shall decide the Dispute based upon applicable law and industry standards, based upon the record submitted by the Parties. The Arbitrator is not permitted to award punitive damages, costs or attorneys' fees, or any amount beyond the amount permitted by law or the policies at issue.

## **G. Settlement**

If the Petitioner and Respondent settle a Dispute that has been submitted to the Arbitration Administrator for arbitration (whether as part of a Petition or a Counterclaim) before the case has been considered by the Arbitrator, it shall be the duty of the Signatories to notify the Arbitration Administrator in writing so that the case can be removed from the docket.

## **H. Reasoned Award**

Upon the submission of all Petitions, Responses and Counterclaims and Supplemental Submissions, the Arbitrator shall issue a reasoned written Award within thirty (30) days of the receipt of the last submission. The Award shall not be appealable and either party may enforce the Award in a court of competent jurisdiction. No award as it relates to a Signatory's individual Dispute may exceed the jurisdiction amount of US \$100,000 unless agreed to in writing by the Signatories involved in the Dispute.'

## 13. SPECIAL ARBITRATION

In Special Arbitration, an Arbitrator may hear a wide variety of claims or Disputes (homeowner and farmowner losses, BI, etc.) and may establish additional rules, including the ability to set the matter for hearing. Filing procedures are the same as regular arbitration with the exception that a Special Arbitration Waiver must be signed by all parties consenting to be bound by the Award rendered. NAMIC may, in its discretion, decline to administer Special Arbitration. In the event of a Special Arbitration, the Arbitrator may permit written document discovery and a hearing in his/her discretion.

## 14. MEETINGS

It shall be the duty of the Chairman to call as many meetings of the Committee as are required to service the Signatories. At least two meetings shall be held each year. The Chairman shall fix the time and place of the meetings.

## 15. AMENDMENTS

These Rules and Procedures may be amended by the action of a majority of the members of the Board of Directors of the Conference. The Arbitration Administrator shall post any amendment summary on the NAMIC website. Any amendment adopted by the Board of Directors of the Conference shall include an effective date for the amendment(s) as noted in the Arbitration Rule Book but shall not apply to any arbitrations that have been docketed.

## 16. ARBITRATION PROCEDURES/APPLICABLE LAW

The substantive law applicable to the Disputes shall be applied by the Arbitrator (exclusive of its conflict of law provisions). The arbitration, except as modified by these Rules, shall be governed by the Federal Arbitration Act, 9 U.S.C. § 1 et. seq.

## THE SIGNATURE AGREEMENT

### ARBITRATION AGREEMENT (SIGNATORY AGREEMENT)

Whereas it is our desire to approve and participate in the Arbitration Agreement (Signatory) approved by the Board of Directors of the NAMIC Property/Casualty Conference the undersigned hereby agrees to forego litigation of the claims between the subscribers to the Signatory Agreement within the authority of the NAMIC Arbitration Committee, and in place thereof to submit to arbitration all questions that may arise with another subscriber within the authority of the NAMIC Arbitration Committee. As amended by the Board of Directors of the Conference of Casualty Insurance Companies: 5/4/60; 5/3/61; 10/13/71; 6/23/81; 6/28/83; 6/24/91 By the Board of Directors of the NAMIC Property/Casualty Conference: 9/20/98; 6/23/03; 12/8/03

(Copies of the Signatory Agreement for signature may be obtained from the office of the Arbitration Administrator.)

NOTICE: By Entering into this Agreement, you waive your right to assert certain claims and disputes in court and waive your right, if any, to a jury.

#### A. SCOPE, EFFECT AND ACCEPTANCE

Whereas it is each Signatory's desire to enter into and be bound to this Arbitration Agreement (Agreement) approved by the Board of Directors of the NAMIC Property/Casualty Conference (Board). The undersigned Signatory hereby agrees to forego litigation of all claims and Disputes (as defined in Section 1 of the Agreement), and in place thereof to submit to the binding arbitration all Disputes that may arise with another Signatory to this Agreement.

Each Signatory agrees to be bound by this Agreement and the NAMIC Procedural and Jurisdictional Arbitration Rules (Rules) which are incorporated herein as Appendix A. In the event of a conflict between the Agreement and the Rules, the terms of this Agreement shall take precedence. For each Dispute, the Signatory waives all rights to litigate the Dispute in court and agrees to binding arbitration of the Dispute pursuant to the terms of this Agreement and the Rules.

Copies of the Signatory Agreement for signature may be obtained from the office of the Arbitration Administrator at \_\_\_\_\_ or electronically at \_\_\_\_\_.

Each Signatory becomes bound to this Agreement by executing it or by agreeing to be bound by accepting this Agreement by electronic means at \_\_\_\_\_.

As amended by the Board of Directors of the Conference of Casualty Insurance Companies: 5/4/60; 5/3/61; 10/13/71; 6/23/81; 6/28/83; 6/24/91

By the Board of Directors of the NAMIC Property/Casualty Conference: 9/20/98; 6/23/03; 12/8/03

## **B. THE ARBITRATION COMMITTEE: RULES AND DUTIES**

The NAMIC Arbitration Committee (Committee) is comprised of a minimum of six (6) representatives from Signatory NAMIC member companies. Each Committee member serves a term of two (2) years. The Committee generally meets seven times annually. After thorough study of documentary evidence submitted by the Signatories involved, an Arbitration Award (Award) is rendered by a sole independent Arbitrator appointed by the Arbitration Administration in each case based on current insurance practice and applicable state law. This Award shall be reasoned and is binding.

The Arbitrator shall be appointed pursuant to the Rules and shall be free of any material conflicts of interest as set forth in the Rules.

## **C. PROCEDURAL AND JURISDICTIONAL RULES**

### **1. JURISDICTION: DISPUTES SUBJECT TO BINDING ARBITRATION**

The jurisdictional requirements for arbitration (and grounds to reject jurisdiction by NAMIC) under this Agreement and the Rules are as follows:

- a. **Automatic Jurisdiction:** The Committee has jurisdiction to appoint an independent Arbitrator in subrogation cases involving damage to or by motor vehicles or livestock, including medical payments, wherein Signatory companies are involved (Dispute). Notwithstanding the basis of jurisdiction, the jurisdictional monetary amount to qualify for all arbitrations hereunder shall not exceed U.S. \$100,000. A sole independent Arbitrator shall be appointed by the Arbitrator Administrator (subject to the consent of the Committee) to decide all Disputes subject to arbitration. The appointment of the Arbitrator and the procedures applicable to the arbitrations are set forth in the Rules. Signatory agreements can represent an individual company or multiple companies as specified by a parent company. These companies will be listed as individual signatories regardless of any corporate relationship with other signatories.
- b. **Nonsignatory Petitioner Jurisdiction:** A nonsignatory company may petition the Committee to take jurisdiction in a Dispute, naming a Signatory as Respondent, provided such Petitioner (Nonsignatory Petitioner) will agree to waive, in writing, the lack of automatic jurisdiction of the Committee, in a form approved and provided by the Committee (Waiver), and further agrees to be bound by the Arbitrator's decision, this Agreement and the Rules. The prescribed filing fee must be submitted with the Petition and Waiver. The Respondent in all cases involving a Nonsignatory Petitioner must consent to such arbitration, in writing (Waiver), and agree to be bound by the Arbitrator's decision, this Agreement and the Rules.
- c. **Nonsignatory Respondent Jurisdiction:** The Arbitrator has no authority to exercise jurisdiction in a Dispute, where the Respondent is not a Signatory to the Agreement, unless such Respondent (Nonsignatory Respondent) will agree to provide a Waiver and further agrees to be bound by the Arbitrator's decision, this Agreement and the Rules. Such Waiver and all fees must be included with the Petition.
- d. **Nonsignatory Third Party Jurisdiction:** If a nonsignatory third party cannot, in certain states, be impleaded as a third-party defendant, the Committee will take jurisdiction of a Dispute under the

theory that Petitioner had the choice of proceeding against multiple possible tortfeasors and elected to pursue its claims against the one whose insurer is a Signatory to the Agreement. However, if such third party can be impleaded according to the law of the state involved, then the Arbitrator cannot take jurisdiction without the nonsignatory party's consent. The Signatory Respondent must also consent to such arbitration and agree to be bound by the Arbitrator's decision, the Agreement and the Rules. The Arbitrator shall determine the materiality of the involvement of any third party, whenever either Signatory raises the issue. If such involvement is deemed material, jurisdiction will not apply unless that party could not be impleaded according to the laws of the state involved or could not be identified.

e. NAMIC reserves the right to decline jurisdiction for any arbitration instituted pursuant to Sections 1(b)-(c) inclusive.

## 2. SELF-INSURER

Where the Respondent has a deductible property damage endorsement making the policyholder a partial self insurer for the amount of the deductible, the Arbitrator cannot accept or assert jurisdiction without consent of the policyholder, unless arbitration between companies is mandatory under state law or the Claimant waives in writing its rights of judicial action against the Respondent's insured for the property damage deductible.

## 3. INSURED

The Arbitrator has non-exclusive jurisdiction in cases involving an action brought by an individual against a Signatory and/or its insured, when that Signatory files a counterclaim against the individual whose carrier is also Signatory. The individual claimant must file a waiver with his/her claim and agree to be bound by this Agreement and the Rules.

## 4. POLICY COVERAGE

The Arbitrator may accept jurisdiction in any Dispute involving a question of policy coverage involving the rights of two or more Signatories only upon agreement of the Signatories and as limited by said agreement.

## 5. COMPANY OWNED VEHICLE

Signatories to the Agreement are permitted to arbitrate a loss on a Signatory owned vehicle, including claims for loss of use, when all parties to the accident are Signatories to this Agreement. A policy of insurance on the involved vehicle is not necessary to qualify for arbitration. If all parties to the dispute are not Signatories, then the appropriate provision of the Rules will apply and are parties shall be bound to the Agreement and the Rules.

## 6. ELIGIBILITY DATES

The effective date for automatic jurisdiction pursuant to Section 1(a) to apply shall be thirty (30) days after the signed Agreement is received. Each new Signatory shall be bound by the decisions of the Arbitrator in all Disputes submitted for arbitration on or after the effective date. Signatories withdrawing

from the Agreement are bound by the Agreement in the case of Disputes in which the date of loss occurs before such withdrawal becomes effective. The provisions relating to binding effect and withdrawal are set forth in the Rules and incorporated herein by reference.

## **D. PETITION**

Arbitration shall be commenced and administered as follows:

Petitioner's Original Claim:

The following must be included as part of the Claimant's Petition for arbitration

- a. Original and one (1) copy of the completed Petition Form (See Appendix C).
- b. the then-current Filing Fee.
- c. Evidence of payment of each Dispute is required for the Arbitrator to proceed to decision. In cases with multiple payments and/or if salvage was included, a complete breakdown of calculations used to arrive at the net amount claimed is required.
- d. Medical Payments–Petitioner's Demand Letter–A letter of demand or subrogation notice must be part of the Petitioner's medical payments/PIP file in order for the Arbitrator to proceed to decision. (This applies to files submitted on and after 8/1/19.)
- e. Respondent's Denial of Claim–A letter of denial must be part of the Petitioner's file in order for the Arbitrator to proceed to decision. However, constructive denial allowing the Arbitration to proceed may be established where Petitioner has sent two subrogation demands within a period of sixty (60) days. An email notice from the Petitioner requesting a denial letter will also suffice when the respondent carrier will not provide a denial letter.
- f. Waiver (where applicable).

## **E. RESPONSE AND COUNTER-PETITION**

1. Respondent's Response: The following must be included as part of the Respondent's Response to the Petition:
2. Original and one (1) copy of the completed Response Form (See Appendix C). If the Respondent is raising the issue of policy coverage, it must be pleaded and established in the original Response.
3. Compulsory Counterclaim/ Counter-Petition:

If the Respondent desires to assert any counterclaim/counter-petition against the Petitioner arising out of the same Dispute that is the subject of the Petition, it shall be presented as a part of Respondent's Response and will be determined by the Arbitrator. Any counterclaim/counter-petition not presented at the time of filing the Response shall be deemed waived absent evidence of exceptional circumstances. If a counterclaim/counter-petition is filed, the original Petitioner shall be entitled to file a Response to the counterclaim/counter-petition.

4. Proof of loss must be provided by the Respondent to support such counterclaim. In cases with multiple payments and/or if salvage was included, a complete breakdown of calculations used to arrive at the net amount claimed in the Dispute is required.
5. Counterclaim Filing Fee. If a counterclaim is filed, Respondent shall provide the filing fee for such counterclaim.

## **F. DISPUTE DETERMINATION**

As set forth in the Rules, once all submissions are completed, the Arbitrator shall decide each Dispute based exclusively upon the record submitted. There is no right to discovery or a hearing. The Arbitrator shall decide each Dispute pursuant to applicable law that is cited by the parties (including applicable burdens of proof) and the facts presented in the record as set forth in the Rules. The provisions of Section H through K are provided for purposes of example and are not limitations upon the Arbitrator's obligation to comply with applicable law that is cited by the parties. All Awards shall be based upon the pleadings, evidence and facts submitted.

## **G. DAMAGES**

1. A party must include in its Petition or Response all claims arising out of the same Dispute, subject to the jurisdiction of the Arbitrator, including companion Disputes concerning its damages, including without limitation, medical pay, material damage, or benefits provided under any automobile reparations act. Only one filing is required to determine the issue of liability, and Disputes and damages not presented are waived.
2. The Arbitrator may request additional written submissions, if necessary, to establish damages or other material issues necessary to resolve the Dispute as set forth in the Rules.

## **H. BAILMENT**

1. Proof of Bailment: The Arbitrator may consider a bailment only if it is specifically pleaded and proved. In order for the Petitioner or Respondent to receive an award based on a bailment, there must be written statements or recorded interviews in the file from both the car owner and the driver-operator, to establish:
  - a. Ownership of the automobile
  - b. Permission to use the automobile
  - c. The specific purpose(s) of the trip using the automobile to support the bailment under applicable law
2. Bailee Negligence: Where applicable law allows, contribution between joint tortfeasors, and if the Respondent can implead the bailee driver of the Petitioner's motor vehicle, and if the Arbitrator finds joint negligence on the part of the Respondent and the bailee, it may issue an award based on the law of the state where the accident occurred. The burden of establishing the requirements of applicable contribution law is on the Claimant or the Respondent, whichever so asserts.

## **I. COMPARATIVE NEGLIGENCE**

Where the applicable law allows contribution on the basis of comparative negligence, the Arbitrator's award may be based on such comparative or percentage of negligence.

## **J. THIRD PARTY CONTRIBUTION**

Where applicable law permits contribution between joint tortfeasors, the Arbitrator's Award may be based upon such comparative or percentage of negligence.

## **K. STATUTE OF LIMITATIONS**

The statute of limitations may be pled as a defense to a Petition or Counterclaim, but it must be specifically pleaded in the Response to the Petition or as an affirmative matter to a Counterclaim. The filing of an arbitration stays all periods of limitation or repose between the Signatories in connection with the Disputes only.

## **L. DEFERMENT OR STAY**

Arbitration of a Dispute may be deferred or stayed until relate claims or suits not subject to arbitration, involving the same damages issue, have been disposed of by settlement or otherwise. The Petitioner or Respondent must request deferment or stay in writing citing the reasons therefore promptly upon the filing of the Petition or Response. Deferment or stay of a Dispute does not relieve a Respondent from the obligation to file its Response or to address liability issues. Jurisdictional issues will not be deferred or stayed. One year from the date of filing, a deferred or stayed Dispute shall be set for determination unless a continuance of the deferment or stay is requested. In the meantime, however, the Signatory granted the deferment or stay shall give the Committee, through the Arbitration Administrator, a report every one hundred and eighty (180) days until the Dispute is resolved. If a deferment or stay request is challenged, the Dispute will then go to the Arbitrator for ruling on the question of deferment or stay.

## **M. RELEASES**

All Signatories waive the requirements of releases in subrogation claims. The paying of settlement drafts or an Award to the Petitioner/Respondent shall constitute a full and final release of the Dispute. The parties to the Dispute consent to the entry of the releases in the Award. All payments shall be made from Signatory to Signatory with no second- or third-party payees permitted.

## **N. BINDING AWARD**

All awards are binding and non-appealable. A final award shall be in writing and shall be reasoned. The final award is enforceable in any court of competent jurisdiction. The provision of the Rules relating to the Award and the Arbitrator's determination shall be binding on all Signatories to the Dispute.

## **O. RETENTION OF RECORDS**

The Arbitration Administrator is authorized to destroy arbitration files after one (1) year following final determination and the issuance of the Arbitrator's award to the Signatories involved. Files are not returned to the parties to the case unless a specific request to that effect is made. The Arbitration Administrator shall

maintain a copy of all Awards rendered for a minimum of six (6) years. (CCIC Arbitration Rules originally promulgated 9/13/61 and changed to NAMIC Property/Casualty Conference 9/20/98.)

## **P. HOLD HARMLESS, INDEMNITY AND MISCELLANEOUS PROVISIONS**

1. Hold Harmless: Signatories agree that NAMIC, the Committee, the Arbitration Administrator, the Arbitrator, their assigns, successors, agents or employees (collectively NAMIC) shall not assert or be liable in connection with any claim, cause of action, damages or liability arising from any award or Dispute made in favor of a Signatory or as a result of any arbitration conducted under this Agreement or otherwise (Claims). Each Signatory agrees to waive the assertion of such Claims. NAMIC shall not be liable for any direct, indirect, compensatory, punitive or consequential damages (including costs or fees) of any kind whatsoever, it being understood that each Signatory waives such damages or recoveries. NAMIC shall not be a party or witness in any litigation involving an arbitration or award, and each Signatory agrees to defend, hold harmless and indemnify (including attorneys' fees, costs and expenses) NAMIC for any claims, causes of action, damages or expenses related to an arbitration, Dispute and/or any award.
2. Integration and Binding Effect. This is the entire agreement between the Signatories and NAMIC relating to the subject matter of this Agreement. This Agreement supersedes all prior agreements, communication or understandings between the parties, and cannot be modified unless in a writing signed by NAMIC and the Signatories to the Dispute. Each Signatory warrants that it shall be bound by this Agreement and the Rules and has the authority to enter into this Agreement.
3. The provisions of the Federal Arbitration Act 9 U.S.C. § 1 et. seq., as modified by the Rules, shall apply to all arbitration proceedings between the Signatories.
4. This Agreement is governed by Indiana substantive law (exclusive of its conflicts of law provisions). The sole and exclusive venue and jurisdiction for any claims, disputes or damages arising from the Agreement (or an arbitration or award under this Agreement) shall be the State or Federal Court located in Indianapolis, Indiana.
5. All arbitration proceedings and this Agreement shall be, except as required by law or for reasons of financial reporting, confidential.



Revised: 2/7/62; 5/1/64; 4/29/70; 10/13/71; 6/20/72; 5/2/73; 4/3/74; 5/6/76; 6/27/78; 9/29/80; 9/14/81; 6/28/83; 10/3/89; 6/24/91; 12/15/92; 9/20/98; 6/17/99; 7/1/01; 1/7/03; 6/23/03; 12/8/03; 12/9/19

## ARBITRATION CHECKLIST

The following is a set of guidelines for reference when preparing an arbitration file. In addition to items that are required, this list suggests helpful information to include.

### **1. Arbitration Petition/Response Form (required)**

Complete the form entirely. Name each company involved and provide full addresses. Note accident information (time, place, road conditions, etc.). Include a statement of facts. List all items submitted in evidence and discuss the legal premises upon which the filing is based.

### **2. Denial (required)**

Respondent's denial of liability or rejection of the amount of damages claimed must be included in the Petitioner's file. Subrogation notice from the opposing party is not sufficient to constitute denial. Constructive denial may be established where Petitioner has sent two subrogation demands within sixty (60) days. Respondent's denial is not required in cases of medical payment only claims.

### **3. Demand (required)**

A letter of demand or subrogation notice must be part of the Petitioner's medical payments/PIP file in order for the Committee to assert jurisdiction. This applies to files submitted on and after 8/1/19.

### **4. Evidence of Payment (required)**

Draft copies are required for each claim. In cases with multiple payments and/or if salvage was included, a complete breakdown of the calculations used to arrive at the claim amount is required.

### **5. Filing Fee for Petition or Counterclaim - \$120.00.**

### **6. Police Report**

### **7. Detailed Diagram**

### **8. Photos of Scene and Photos of Damage**

Original photos are preferred and will be returned upon request.

### **9. Statements from All Parties Involved**

Transcribed recordings or legible handwritten statements should be submitted. Statement resumes are not acceptable. Underlining the facts pertinent to the accident and identifying each statement (i.e., Petitioner, Respondent, witness) at the top of each page will facilitate review.

### **10. Copies of Legal Items**

Opinions, court decisions and local statutes that may apply and anything else that may help prove contentions.

# NAMIC ARBITRATION

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**Important:** When reference is made to a specific opinion, statute, etc., it is the responsibility of the party asserting such to provide a copy of the opinion, statute, etc. and its citation.

## SOME THINGS TO REMEMBER

1. Group Affiliates of Signatories are not subject to the automatic jurisdiction of the Committee without a separate Agreement signature and the payment of applicable filing fees.
2. If a nonsignatory is involved in a case, either as Petitioner or as Respondent, written consent to arbitrate (Waiver of Non-Jurisdiction) must be received from all parties (both Signatory and nonsignatory).
3. Files are returned only upon request. If you require the return of any material contained in your Petition or Response once a decision is reported, please include a stamped, addressed envelope large enough to accommodate the file with your materials. At the time your decision is mailed, you will be advised to notify the NAMIC office if you wish to have your materials returned.

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**NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES**

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