
# Guide for Arbitrators

*A Resource and Reference Manual for Member Arbitrators*

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## Ethical Obligations

Arbitrators appointed to AF's arbitration panels accept serious responsibilities that include important ethical obligations. However, there have been few situations wherein an arbitrator's objectivity has been questioned. AF believes it is in the best interest of the arbitrators for AF to set forth generally accepted standards of ethical conduct.

**1. An arbitrator must abide by high standards of conduct so that the arbitration process preserves its integrity and fairness.**

Objectivity and neutrality are the foundations of a credible arbitration system. An arbitrator must be a neutral, objective, third party and not an advocate for either party. Do not decide a case based on how you would have investigated, adjusted, or presented it.

You must recuse yourself from hearing a case if you have a direct or indirect interest in the outcome (financial, business, personal, or professional); this includes a case where your company is not a party, but an insured was involved. We also recommend that you recuse yourself from hearing a case that involves a prior co-worker or claim adversary if your decision could create an **appearance** of impropriety. The mere appearance of impropriety is enough for you to return a file to AF for reassignment to another arbitrator.

**2. AF's rules mandate that only qualified arbitrators will hear cases.**

AF offers five arbitration programs:

- Automobile Subrogation
- Med Pay Subrogation
- PIP (Personal Injury Protection) Subrogation
- Property Subrogation
- Special Arbitration

Each program is designed to resolve specific types of claims disputes where the right of recovery is either negligence or concurrent coverage, and each has its own qualification criteria. You may only hear cases filed in the program for which you are qualified (i.e., have the appropriate claims experience and knowledge to decide the disputed issues); certified, where applicable; and have your supervisor's approval to be appointed and participate.

You must return any case to AF that you believe you are unqualified to hear.

**3. An arbitrator's authority is derived from the respective arbitration agreement.**

An arbitrator should neither exceed that authority nor do less than is required to exercise such authority. The agreement establishes procedures and rules to follow when conducting the arbitration hearing. As an arbitrator, you must have a complete understanding of these

procedures and the rules of the program(s) for which you have been appointed. Attending AF-sponsored training webinars is expected to keep abreast of current procedures and best practices.

**4. An arbitrator is not to delegate the duty to decide a case to any other person**.

This is particularly important with three-person panels. It is improper for only one or two members of a three-person panel to read and decide a case. Each member must review the submitted arguments and evidence and discuss the merits of the case. Remember, the reason a party requests a three-person panel is to obtain this interactive discussion of the merits of the case.

**5. An arbitrator must base his or her decision solely on the evidence presented and the applicable law.**

Intercompany Arbitration is an informal process. Formal rules of evidence do not apply and serve only as a guide. All evidence that the parties submit to support their case is to be considered, except as noted in the Auto Forum for damage evidence as stated under Rules 2-1 and 2-5. As the arbitrator, you examine the evidence and decide what it "is worth" regarding the position presented by the party. Evidence should be both relevant and credible to the dispute. A decision should be based on the preponderance of evidence in all the arbitration forums. As an arbitrator, you may use your claims knowledge and experience when rendering a decision, but you may not use any other outside resources to research an issue.

Do not let your role in the industry influence you. Your primary role may focus on subrogation recoveries or adjusting liability claims, but your role in the industry should not influence how you decide a case. For example, in a hit-and-run case with no answer, it is not within your scope as an arbitrator to question or challenge the lack of a witness; instead, you must decide if the supporting evidence submitted by the Recovering company, in the absence of any counterarguments or counterevidence, is plausible.

**6. An arbitrator must conduct himself or herself in a manner that is fair to all parties.**

You must hear cases in an impartial manner with equal treatment shown to each party. You must not be swayed by outside pressure, concern for criticism, or self-interest. If you are assigned to hear a case with a personal appearance from a party, you, as the arbitrator, are in charge of the hearing. The representative is present only to answer questions you may have or offer clarification of the evidence. The representative is not permitted to present oral testimony or introduce evidence that is not listed in the filing. Do not be swayed by "what is said." Rather, base your decision on the "facts" as presented in the arguments and evidence.

**7. An arbitrator must maintain neutrality, privacy, and confidentiality concerning each party and the contents of a case**.

You must not make negative or sarcastic remarks about a party in your decision. Derisive comments create an appearance of impropriety and could foster a bias against a particular member or representative. AF will not allow such comments.

As an arbitrator, you may not share, copy, or print evidence submitted by a party.

## Decision Quality

### Prepublication and Quality Reviews

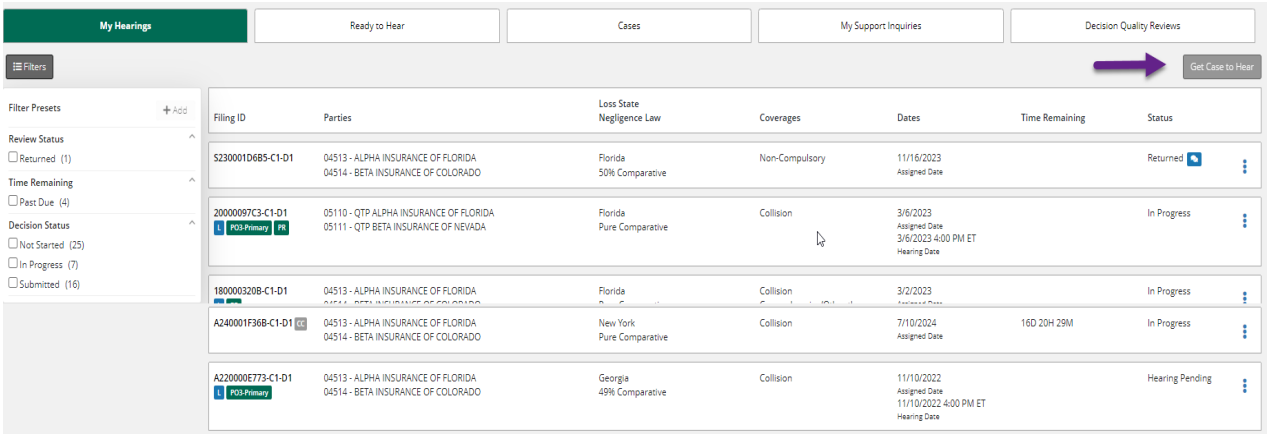
AF's overall goal is to ensure member satisfaction regarding decision quality and to help identify any arbitrator training opportunities.

AF has implemented internal processes to support the commitment to our membership to ensure decision quality.

- Our prepublication review process allows AF to ensure decisions meet expectations and are accurately and clearly entered before they are published to the parties. If opportunities are seen, the decision is returned to the arbitrator for review and correction or further clarification.
- AF also conducts post-decision reviews of a sampling of cases and decisions to identify improvement opportunities for recovering and responding companies and arbitrators. The insights are shared via E-Bulletin articles and recurring webinar workshops.
- Each quarter, member representatives review a sampling of recent decisions to provide feedback on the reasonableness (based on the arguments and evidence) and explanation of the decision.

## My Hearings Worklist

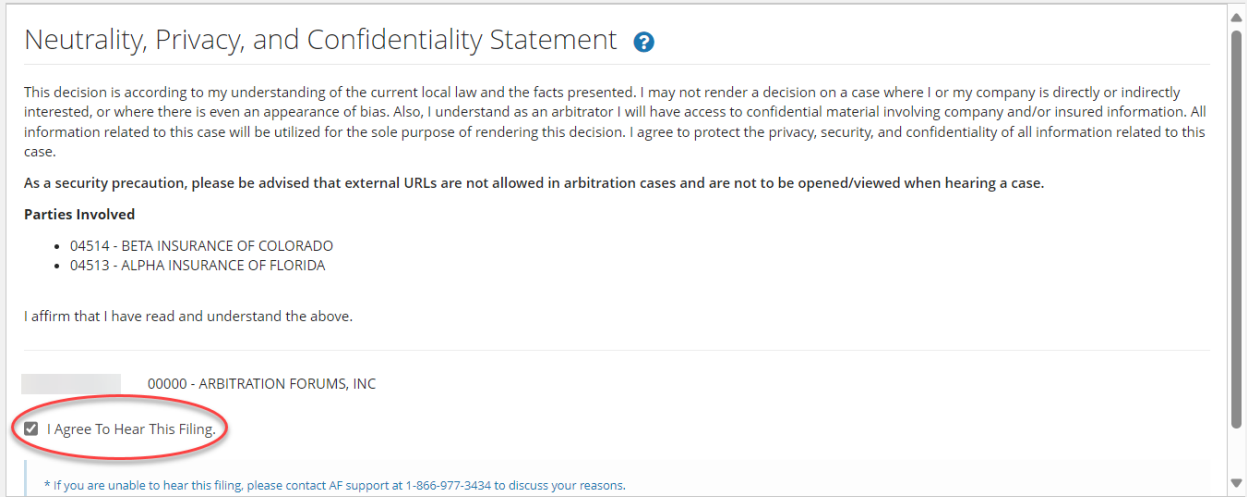
When you access TRS, the following view will display. The **My Hearings** worklist is where you will "Get Case to Hear" or access an in-progress decision to complete it.



The remainder of this Guide for Arbitrators will review the hearing workflow that you, as an arbitrator, will proceed through. Some items discussed will not be seen in every assigned case, i.e., deferments and jurisdictional exclusions, but are included for reference as needed.

## Ethical Obligations: Neutrality, Confidentiality, and Privacy Statement

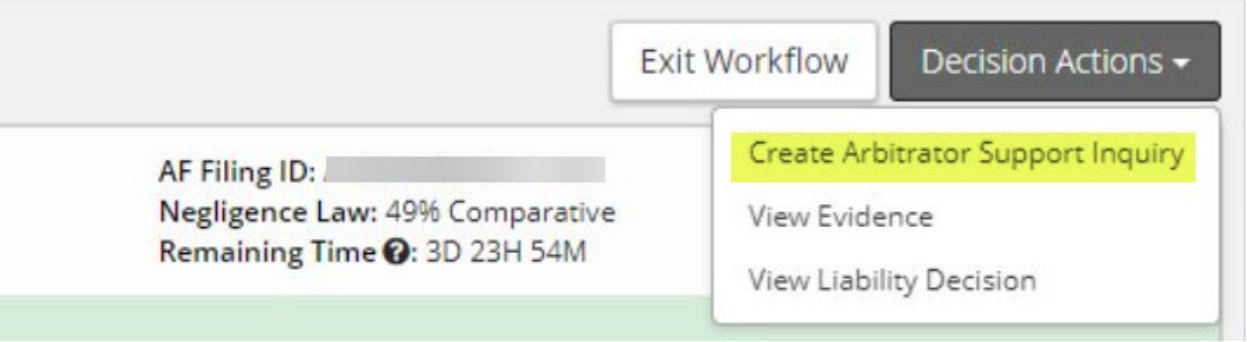
When you first enter a filing, you will be met with the Neutrality, Confidentiality, and Privacy Statement and need to agree to move forward with the hearing.




AF's arbitration application will identify and assign files for you to hear based on your claims experience and qualifications, while excluding any cases that involve your company. Since subsidiaries are likely to change, or all may not be known, you should still look at the involved members when you first review a file to ensure there is no conflict of interest. You cannot hear a case that involves your company. This includes a case where your company is not a party but an insured was involved in the loss.

As stated in the Ethical Obligations section, you must also refrain from hearing a case involving a prior employer if your objectivity could be questioned. You must avoid the appearance of bias or impartiality.

If a potential conflict of interest exists, use the **Create Arbitrator Support Inquiry** functionality to request that the case be reassigned to another arbitrator.




## Deferments

A deferment is a one-year postponement from the date of filing of an arbitration filing. Any party may request a one-year deferment if issues must be resolved prior to the arbitration case being heard. Once the request is made and the justification for it is provided in the Deferment Justification section, the deferment request will be automatically granted.

A party may challenge the deferment and justify its position if it believes the delay is not warranted. When a deferment is challenged, your job is to determine if the one-year postponement is valid or necessary. Some examples include the recovering company having filed simply to toll the statute of limitations with the understanding that an underlying claim or suit must be resolved first; the responding company has a policy limit issue with additional exposures; or a coverage or fraud investigation is pending.

Deferment requests must be supported with evidence. If, as in the example above, the reason for the deferment request is that a companion claim that could affect the arbitration case is in litigation, the party should submit proof of the litigation.

If the request is upheld, the case will remain in deferred status for one year from the date of filing the deferment request. If the request is denied, the case will be returned to the parties.

There are times when a party may raise a jurisdictional exclusion **and** request a deferment. Both must be properly asserted for them to be addressed. If a party asserts an exclusion citing policy limits and additional claims pending that may exhaust its limits, you should check to see if it has also requested a deferment (in compliance with Rule 2-10) to allow time for the issue to be resolved. If it has also properly requested its deferment, the exclusion should be denied and the deferment granted.

*NOTE: If you uphold the exclusion in these situations, the filing will be closed, and you will not be able to grant the deferment.*

## Findings: Pleadings/Jurisdictional Exclusions

**Pleadings** are typically asserted by the recovering company, while exclusions are asserted by the responding company.

Pleadings include issues or legal doctrines that could change the allocation of damages (like bailment or joint and several liability). The applicability of a pleading to a filing could define the amount of the award if liability is found.

The recovering company would present its liability arguments, i.e., "Beta's negligence caused our damages or a percentage of them." The existence and applicability of joint and several liability would change the allocation of damages if, for example, it would allow the recovering company to recover 100% of its damages. This is regardless of the amount of negligence proven against the named responding company.

The following lists the available pleadings and what an arbitrator should consider when ruling on them.

- **Bailment**: Did the recovering company submit evidence to support bailment applied to the loss and how it affects its recovery?
- **Joint and Several**: Did the recovering company support that joint and several liability applies to this jurisdiction? If joint and several is applicable, was it proven how it applies?
- **Spoliation of Evidence**: Has the recovering company proven the responding company either disposed of critical evidence or did not make it available for the recovering company to inspect/test? Did the recovering company prove that the piece of evidence would have been crucial to proving its case against the responding company?

**Jurisdictional exclusion** is defined for inter-company arbitration purposes as "a defense that does not address the allegations (i.e., liability, concurrent coverage, and/or damages), but instead asserts a reason that arbitration lacks jurisdiction over the claim." Exclusions come from Article Second of the various arbitration agreements and the rules.

Exclusions must be asserted in their appropriate section. If the exclusion is applicable and the Recovering company's claim is barred, this needs to be the first issue addressed/resolved by the arbitrator. If, for example, the statute of limitations expired prior to the date the recovering company filed its claim in arbitration, there is no need for you to take time assessing liability or damage issues. If a party fails to raise an exclusion in the appropriate section, you cannot consider it. Further, you may not raise an exclusion for a party. If, for example, the recovering company has filed its claim after the statute of limitations expired, but the responding company has not asserted the exclusion, it is waived. You may not raise it for the responding company.

After reviewing the arguments and evidence presented regarding an exclusion, you will either grant it or not and explain your ruling. If you grant the exclusion, arbitration lacks jurisdiction (Out of Jurisdiction) over the filing or only the responding company asserting it if there are multiple responding companies. If the exclusion is not granted, arbitration retains jurisdiction (In Jurisdiction) over the claim, and you will decide on the issue of liability and/or damages depending on what is disputed or conceded.

The following lists the available jurisdictional exclusions and what an arbitrator should consider when reviewing them.

- **Federal Vehicle:** Does the responding company's evidence support that claims cannot be pursued against federal vehicles? Did the recovering company offer a rebuttal and evidence to disprove the exclusion?
- **Filed Under the Wrong Coverage**: Do the damages sought by the recovering company fall under the coverage that the filing was submitted under? (e.g., auto damages sought under PIP)
- **Incorrect Right of Recovery**: Did the recovering company select the correct right of recovery? (e.g., recovery is based on the responding company's negligence, but Concurrent Coverage (CC) was selected as the right of recovery)?
- **Lack of Notice/Municipality Immunity**: Does the responding company's evidence support that a statutory lack of notice bars recovery or municipality immunity applies? Did the Recovering company offer a rebuttal and evidence to disprove the exclusion?
- **Liability Deductible/Self-Insured Retention**: Does the responding company's evidence confirm the liability deductible/retention amount? If the award is within the liability deductible/retention amount, no damages are to be awarded. Only damages in excess of the liability deductible/retention amount can be awarded.
- **Not Writing Insurance in Loss State**: Does the responding company's evidence support that the responding company does not write insurance in the loss state? This is typically asserted where arbitration is statutorily mandated in the loss state, but the responding company does not write in the state. Therefore, mandatory arbitration does not apply to it.
- **Release and Hold Harmless**: Does the responding company's evidence support that the claim has been paid and released?
- **Retro-rated Policy**: Does the responding company's evidence support that the policy is retro-rated? (e.g., Is the insured's insurance premium based upon the actual losses incurred over a stated period?)
- **Spoliation of Evidence (Rule 2-11)**: Does the responding company's evidence support that they were not given the opportunity to inspect critical evidence or that it was destroyed before they were able to inspect it? Does the responding company's evidence support that this would be a complete bar to recovery?
- **Statute of Limitations**: Does the evidence support that the claim was filed after the statute of limitations had expired?

- **Subrogation/Recovery Prohibited**: Did the responding company submit evidence to support its position? This exclusion can be used for various reasons, including counter damages filed late (Rule 2-2). You will need to confirm that the damages claimed were paid after the response submission date for the original filing.
- **Product Liability Claim Arising from an Alleged Defective Product (Property Arbitration)**: Did the recovering company submit evidence of written consent from the responding company agreeing to arbitrate the claim?
- **Watercraft Claim Arising from Accidents on Waters Under Federal or International Jurisdiction (Property Arbitration)**: Did the recovering company submit evidence proving that the waters upon which the accident occurred were not under federal or international jurisdiction? Did the responding company provide proof that the waters were under federal or international jurisdiction?

**If the recovering company files for the wrong coverage or right of recovery, and the responding company(s) does not raise an exclusion, an arbitrator should contact AF to verify if the case should be heard or administratively withdrawn.*

## Ethical Obligations: Denial/Disclaimer of Coverage

Article Second of AF's Agreements and Rules states that no company should be required to arbitrate any claim if it has asserted a denial of coverage. Rule 2-4 elaborates further on coverage denials. A denial of coverage must be raised as a jurisdictional exclusion in the proper section. If it is not, it cannot be considered by the arbitrator. Rule 2-4 has caused some confusion, so we would like to clarify what it means.

The rules define a denial of coverage as: a company's assertion that (a) there was **no liability policy in effect** at the time of the accident, occurrence, or event; **or** (b) a liability policy was in effect at the time of the accident, occurrence, or event, but **such coverage has been denied/disclaimed** to the party seeking liability coverage for the claim in dispute. This applies only to a complete denial of coverage based on the event in dispute. If the denial is based on what damages the policy covers, i.e., work product, the case will proceed to hearing to determine what damages, if any, are payable per the policy. A reservation of rights letter is also not an affirmative denial of coverage.

The rule says the denial letter is "to the party seeking (liability) coverage." When the named insured or a permissive driver was operating the responding company's vehicle, the responding company's denial of coverage letter should be sent to the named insured, driver, or both since both are seeking liability coverage from the responding company's policy. A denial of coverage letter is needed any time it is possible to send one.

In the case of a non-permissive driver, the responding company's denial of coverage letter should be directed to the driver (if known) and/or the named insured, since it is liability coverage

from the insured's policy that is being denied. A copy of a letter addressed to anyone else about the denial is not sufficient for this rule's purpose. This includes letters where the correct party is courtesy copied.

If the non-permissive user is unidentified (e.g., a stolen vehicle), a letter cannot be sent. Likewise, if no policy exists for the alleged insured and the insurer has no information about this party, a letter cannot be sent. In most other situations, a copy of the denial letter to the correct party must be provided. If no denial-of-coverage letter has been sent to the insured, a responding company should proactively address the lack of same for the arbitrator to consider as part of the no coverage defense.

In addition, we periodically see "conditional" denials that leave an opening for the insured to call and cooperate to get coverage for the accident. The letter may start out using denial language but ends up with an offer to reconsider if the insured cooperates. Since some states and companies require this type of language in these letters, consideration must be given by the arbitrator when deciding whether the content of the letter is sufficient to support the denial-of-coverage defense. If the coverage defense is granted and arbitration lacks jurisdiction, the recovering company would be free to pursue litigation versus the "uninsured" tortfeasor.

Note that failure to submit a copy of a denial-of-coverage letter because such letters are not sent as company practice does not overcome the rule's requirement. Arbitration replaces litigation. Unless the company intends to allow the alleged insured to provide his or her own defense in case of a suit, the company should expect to participate in arbitration or deny coverage to him or her in writing.

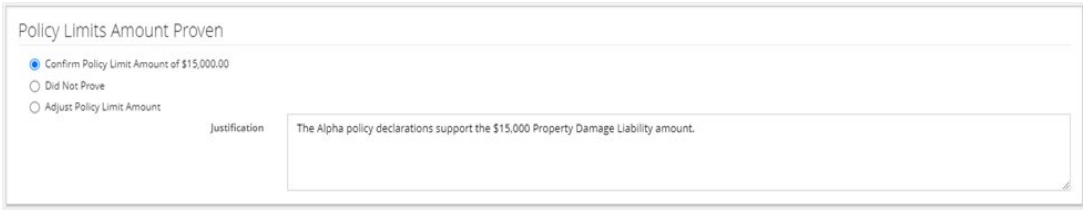
## Policy Limits

When a responding company asserts and supports its policy limits (via a policy declaration page, claim system coverage screenshot, or some other documentation that states the policy limit) and the award exceeds its policy limit, arbitration lacks jurisdiction. This is because arbitration has no jurisdiction over the insured's interest. AF cannot compel the responding company's insured to pay any award amount over the responding company's policy limit.

A recovering company is permitted, however, to indicate that it will accept an award not exceeding the policy limit, allowing arbitration to retain jurisdiction over the matter. By agreeing to do so, the recovering company waives any right to pursue the balance of the claim directly against the responding company's insured.

If you hear a case wherein the responding company has raised and supported a jurisdictional exclusion of policy limits (stated and proven the amount), you will complete the following actions.

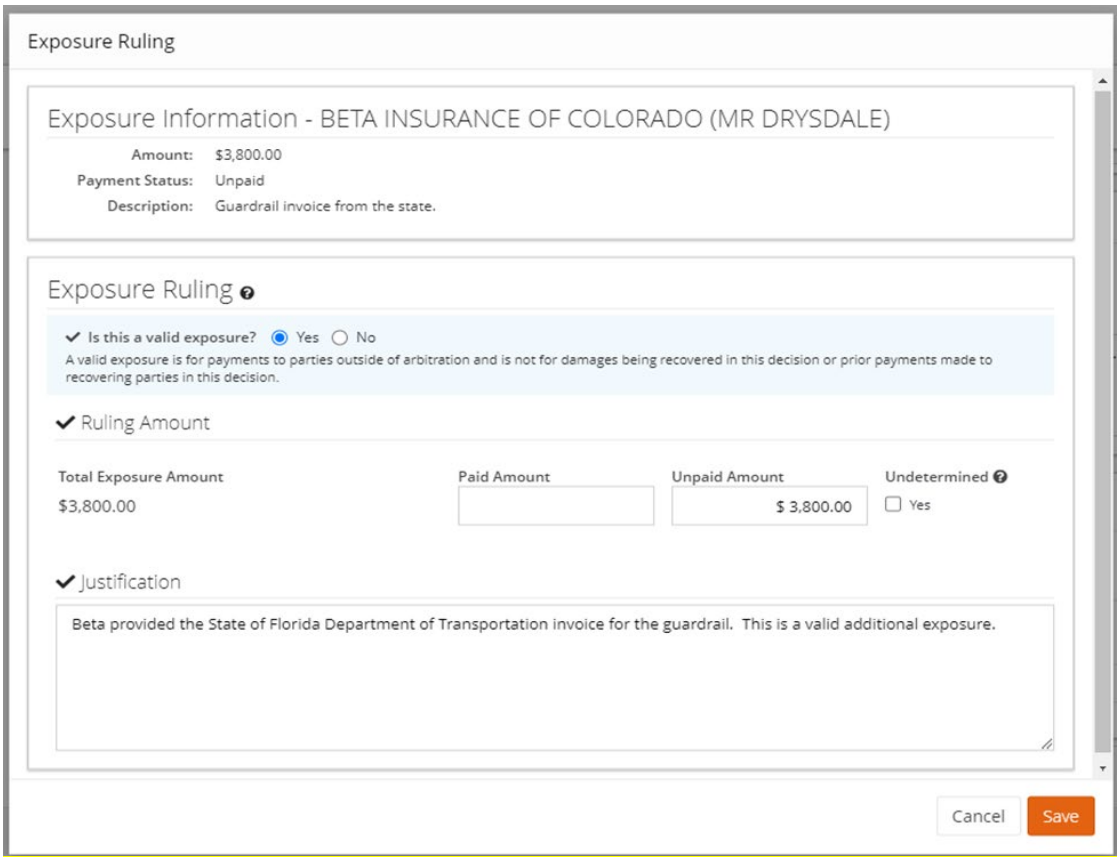
1. Review the submitted evidence and make the correct selection in the policy limit section. An example where the evidence confirmed the policy limit amount follows. The selection of "Did Not Prove" would be applicable if no policy evidence was supplied in the filing. There will be times when the "Adjust Policy Limit Amount" may be applicable. This can occur when the policy evidence information supports a lower or higher policy limit amount.




2. Additional exposures may become a factor in a policy limits issue. Additional exposures must be reviewed to determine if they are valid and would be a factor in reducing the available policy limits. A valid additional exposure is any damages not being sought in the arbitration filing that could be paid from the responding company's limits. If an additional exposure is found to be valid, the arbitrator must select "Paid Amount," "Unpaid Amount," or "Undetermined."

   **Paid Amount**: An amount paid to a third party for damages not being claimed in the filing; proof of the payment being issued is sufficient.
   **Unpaid Amount**: A known exposure amount that has not been paid and is not requested in the filing.
   **Undetermined**: Damages of an unknown amount that are not sought in the filing for an exposure that will be owed by the responding company.

Please see the following unpaid exposure ruling example. Beta is aware of the exposure and has supported it with an invoice. However, they have not made a payment to the additional party.

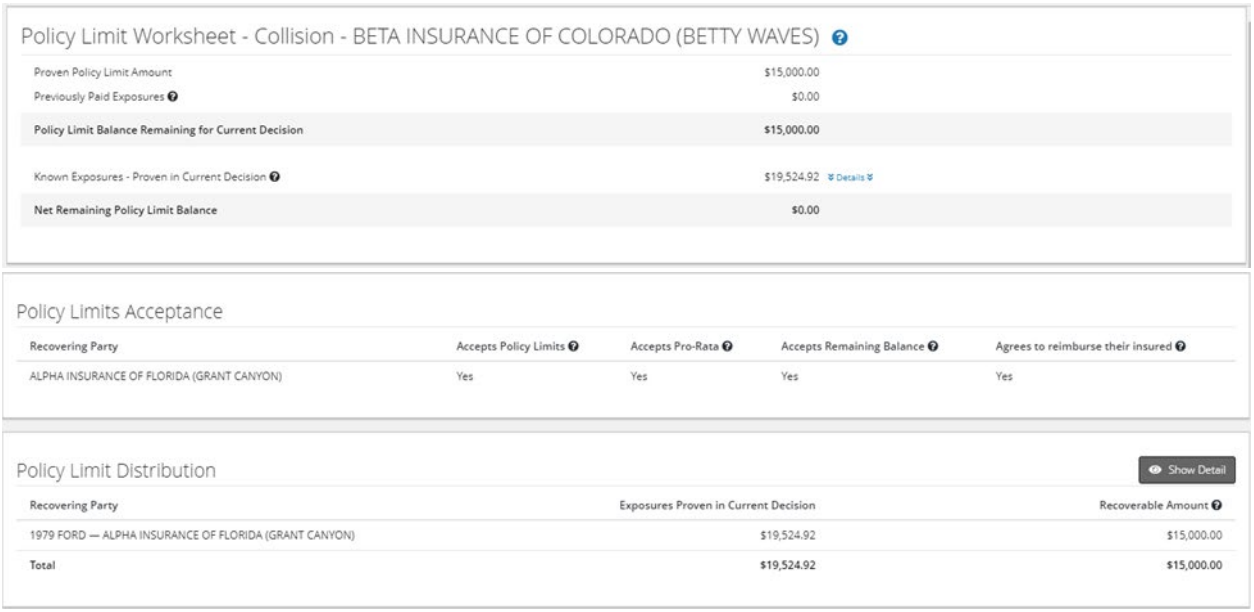



A responding company may cite potential **out-of-pocket** expenses on the part of the recovering company's insured as an additional exposure. Stating that the recovering company's insured may have out-of-pocket expenses is not enough information to be a valid exposure. There must be proof that out-of-pocket expenses exist for you to validate the exposure. A recovering company agreeing to indemnify its insured could also be a factor and is discussed after the following examples.

3. As the arbitrator, you will then decide liability. If the responding company is found liable, TRS will have you proceed to review the requested damages. If the proven damages exceed the confirmed policy limits, you will advance to the Policy Limits Worksheet. TRS populates most of the information and awards on your behalf.

Two examples covering different policy limit scenarios follow. The first is an example of when policy limits have been accepted, and the proven damages are above the policy limit amount. The second example is when policy limits have been exceeded, and there is an additional exposure.

## Example 1



Policy Limit Worksheet - Collision - BETA INSURANCE OF COLORADO (BETTY WAVES)

| | |
|---|---|
| Proven Policy Limit Amount | $15,000.00 |
| Previously Paid Exposures | $0.00 |
| **Policy Limit Balance Remaining for Current Decision** | **$15,000.00** |
| Known Exposures - Proven in Current Decision | $19,524.92 Details |
| **Net Remaining Policy Limit Balance** | **$0.00** |

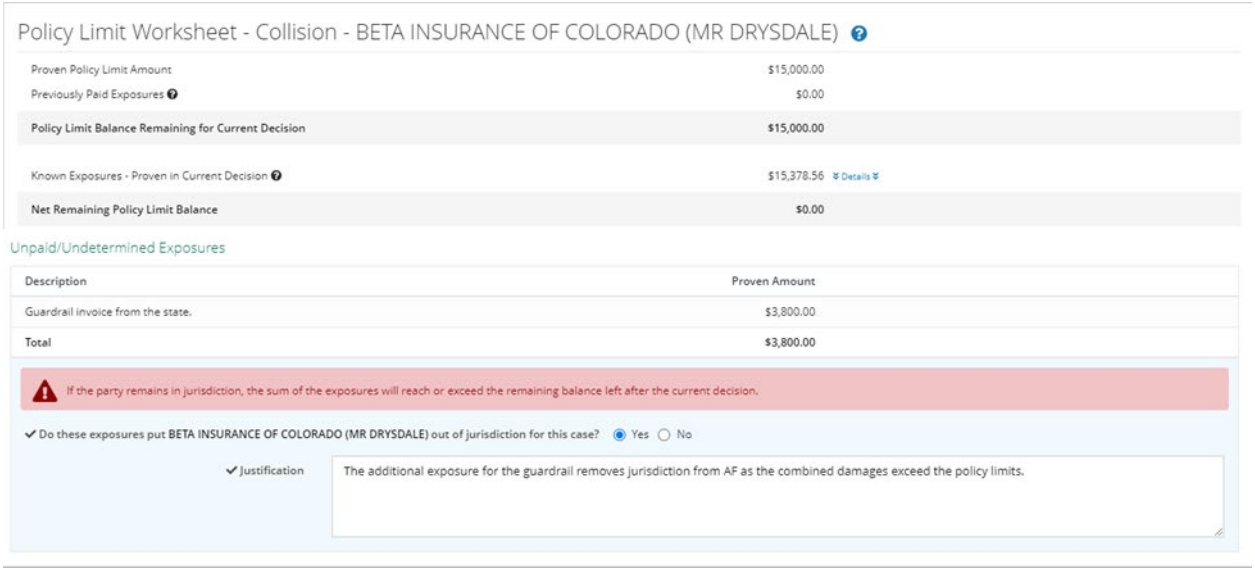
Policy Limits Acceptance

| Recovering Party | Accepts Policy Limits | Accepts Pro-Rata | Accepts Remaining Balance | Agrees to reimburse their insured |
|---|---|---|---|---|
| ALPHA INSURANCE OF FLORIDA (GRANT CANYON) | Yes | Yes | Yes | Yes |

Policy Limit Distribution — Show Detail

| Recovering Party | Exposures Proven in Current Decision | Recoverable Amount |
|---|---|---|
| 1979 FORD — ALPHA INSURANCE OF FLORIDA (GRANT CANYON) | $19,524.92 | $15,000.00 |
| **Total** | **$19,524.92** | **$15,000.00** |

## Example 2



Policy Limit Worksheet - Collision - BETA INSURANCE OF COLORADO (MR DRYSDALE)

| | |
|---|---|
| Proven Policy Limit Amount | $15,000.00 |
| Previously Paid Exposures | $0.00 |
| **Policy Limit Balance Remaining for Current Decision** | **$15,000.00** |
| Known Exposures - Proven in Current Decision | $15,378.56 Details |
| **Net Remaining Policy Limit Balance** | **$0.00** |

Unpaid/Undetermined Exposures

| Description | Proven Amount |
|---|---|
| Guardrail invoice from the state. | $3,800.00 |
| **Total** | **$3,800.00** |

If the party remains in jurisdiction, the sum of the exposures will reach or exceed the remaining balance left after the current decision.

✓ Do these exposures put **BETA INSURANCE OF COLORADO (MR DRYSDALE)** out of jurisdiction for this case? (•) Yes ( ) No

✓ Justification: The additional exposure for the guardrail removes jurisdiction from AF as the combined damages exceed the policy limits.

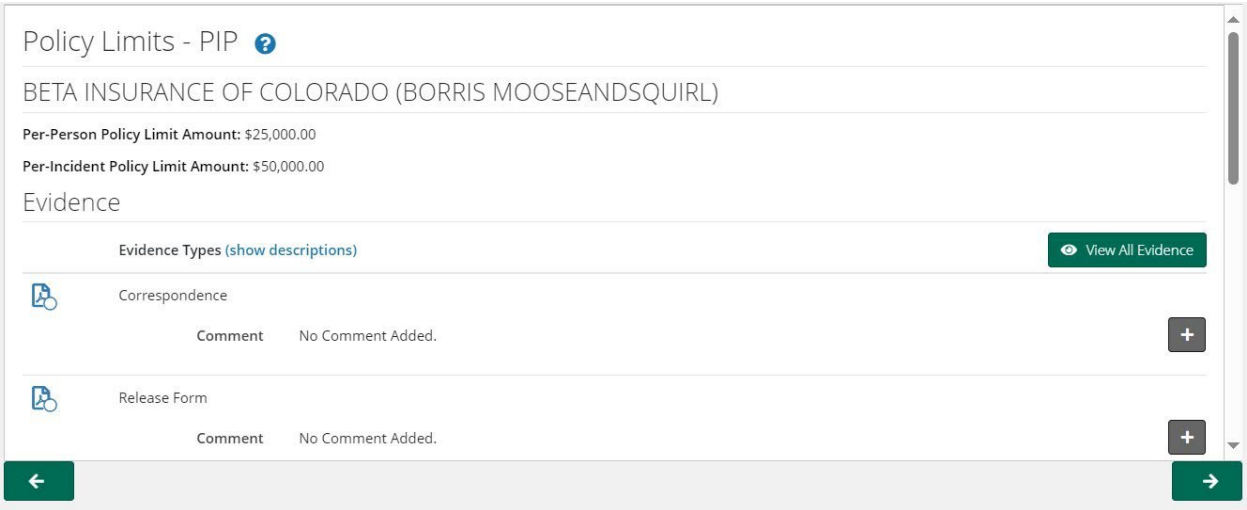
In the second example, the additional exposure (Florida Department of Transportation) is not a member of arbitration. Therefore, AF does not have jurisdiction to award damages from the Beta policy limits. The case would be placed out of jurisdiction even if the Recovering company has agreed to a pro-rata or remaining limits amount in this example.

If the second example's additional exposure was for an insured's out-of-pocket expenses, the filing may or may not remain in jurisdiction. When the Recovering company has agreed to indemnify its insured for supported out-of-pocket expenses, the filing would remain in

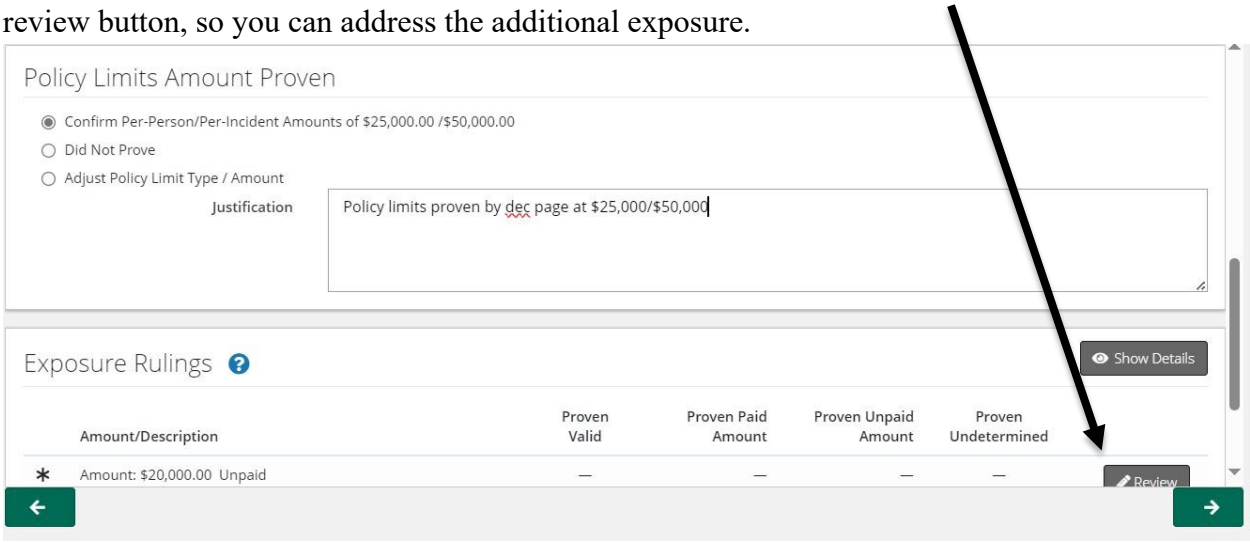
jurisdiction. The filing would be out of jurisdiction when the Recovering company has not agreed to indemnify its insured's supported out-of-pocket expenses.

## Example 3 (for PIP/Med Pay Filings)

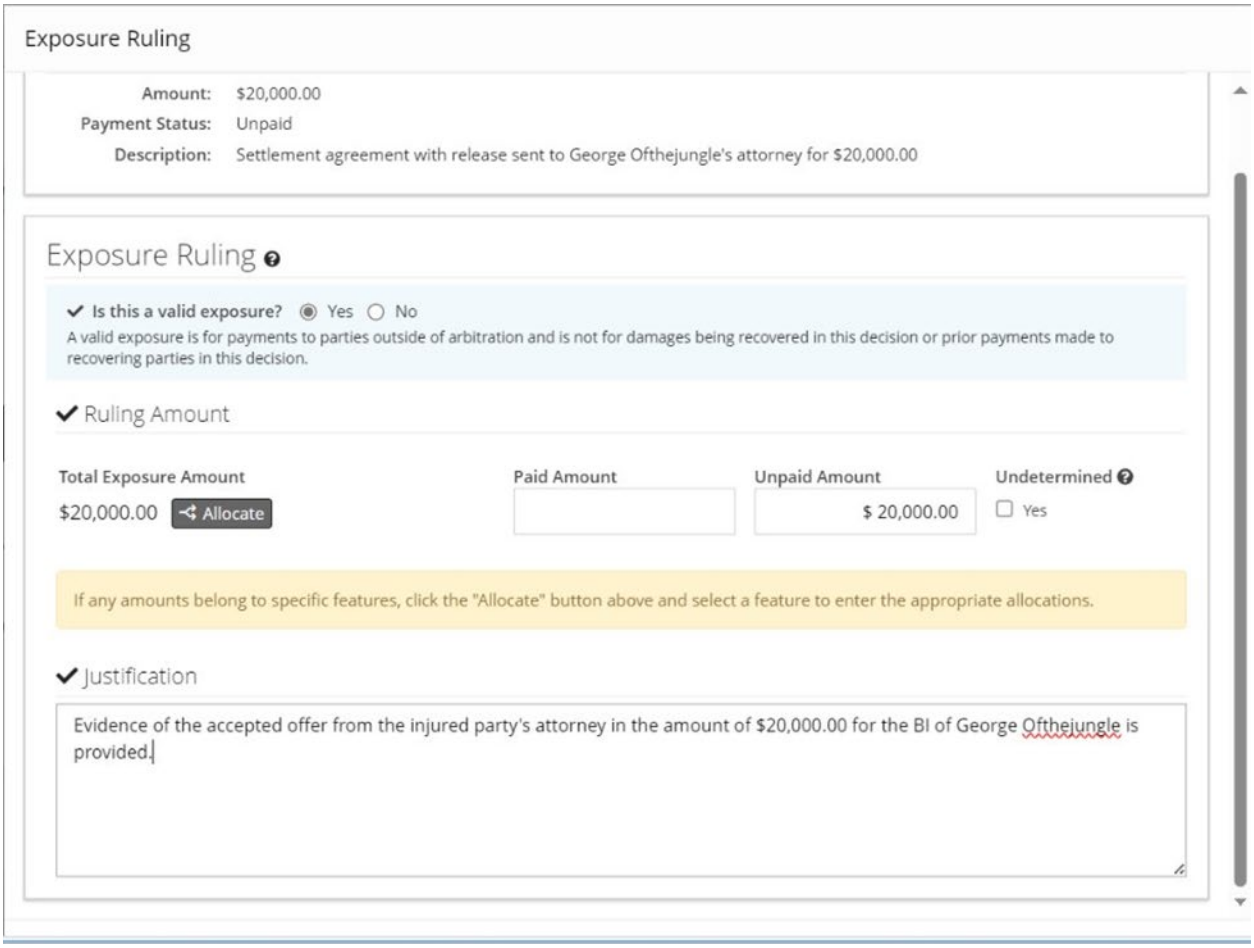
Here the responding company has a per-person/per-incident policy limit. For this filing, Beta has a $25,000.00 per-person policy limit with a $50,000.00 per incident limit. The following illustration shows the Policy Limit page in the decision workflow.




On the same workflow page, you will confirm the policy limit. In the following illustration, you will see Beta has entered an additional exposure for the feature. You will want to click on the review button, so you can address the additional exposure.




Please note: Before you verify the additional exposure is valid, you will not see the option to allocate the policy limit.

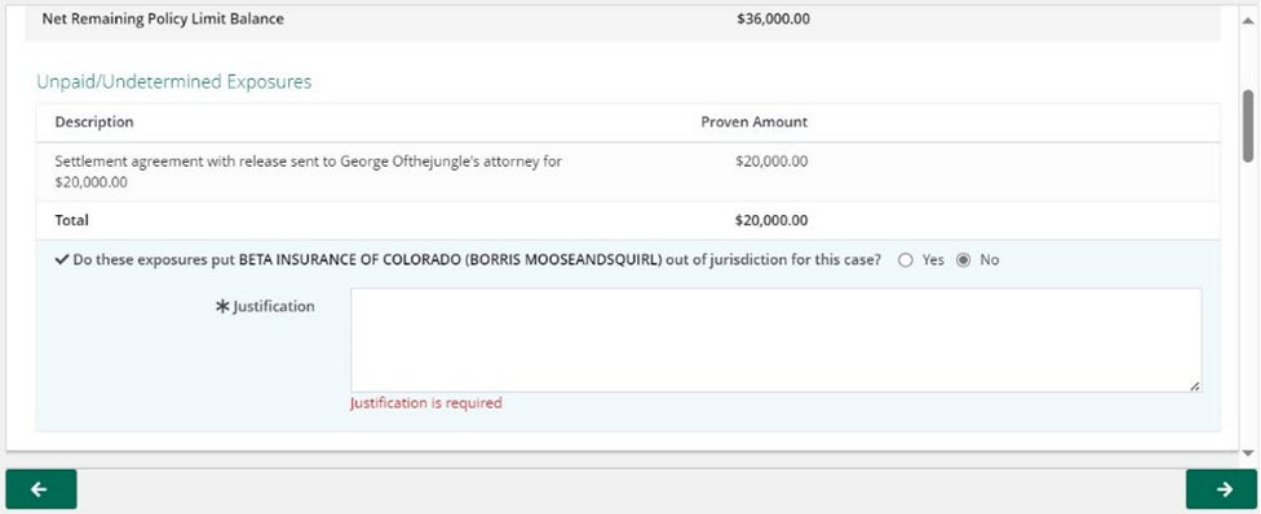



After clicking "Yes" to confirm this is a valid exposure, you get the **Allocate** button to allocate the policy limit. Once you have clicked on the Allocate button, it will display the feature for this filing.

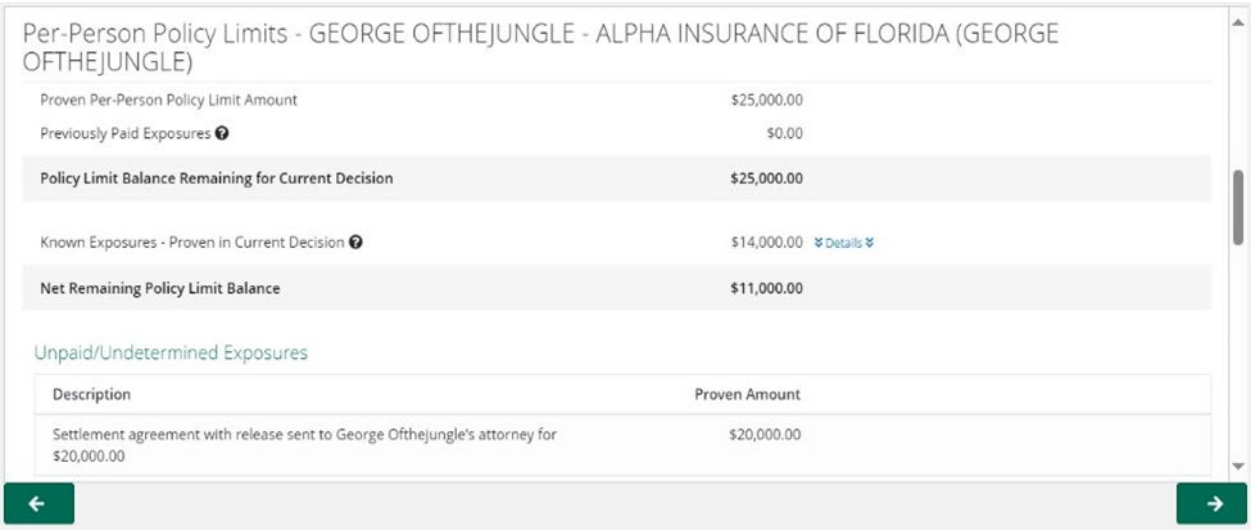
As seen above, you can allocate the unpaid additional exposure of $20,000.00.

Once you have addressed liability and damages, the workflow will take you to the Incident Policy Limits Worksheet. You will see the per-incident limit of $50,000.00 and the remaining balance. The next column lists the proven damages in the current decision, and the amount remaining for the per-incident limit. From there, you will see the unpaid/undetermined expenses.

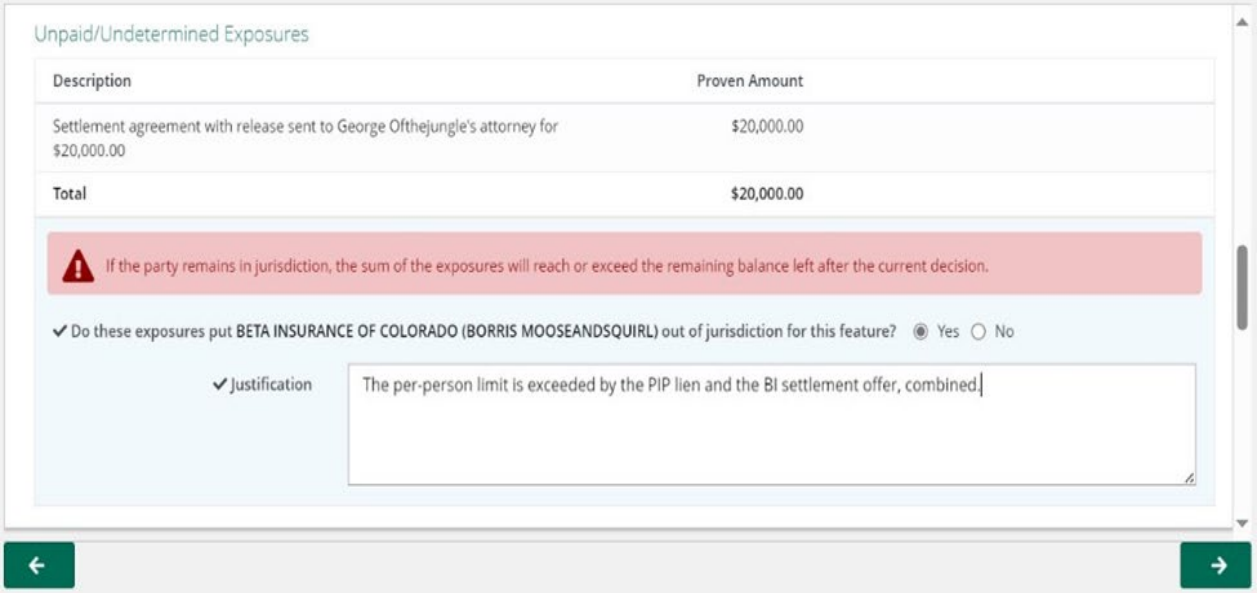
Scrolling down from there, you will be asked if the exposures put the per-incident limit out of jurisdiction, which for this example as follows, the answer would be no.




As you continue to scroll down the worksheet, you will see the Per-Person Policy Limit of $25,000.00. Below that, you will see the amount proven in the decision, which is $14,000.00. You will then see the Net Remaining Policy Limit Balance for this feature is $11,000.00. Below that is the Unpaid/Undetermined Exposure of $20,000.00.



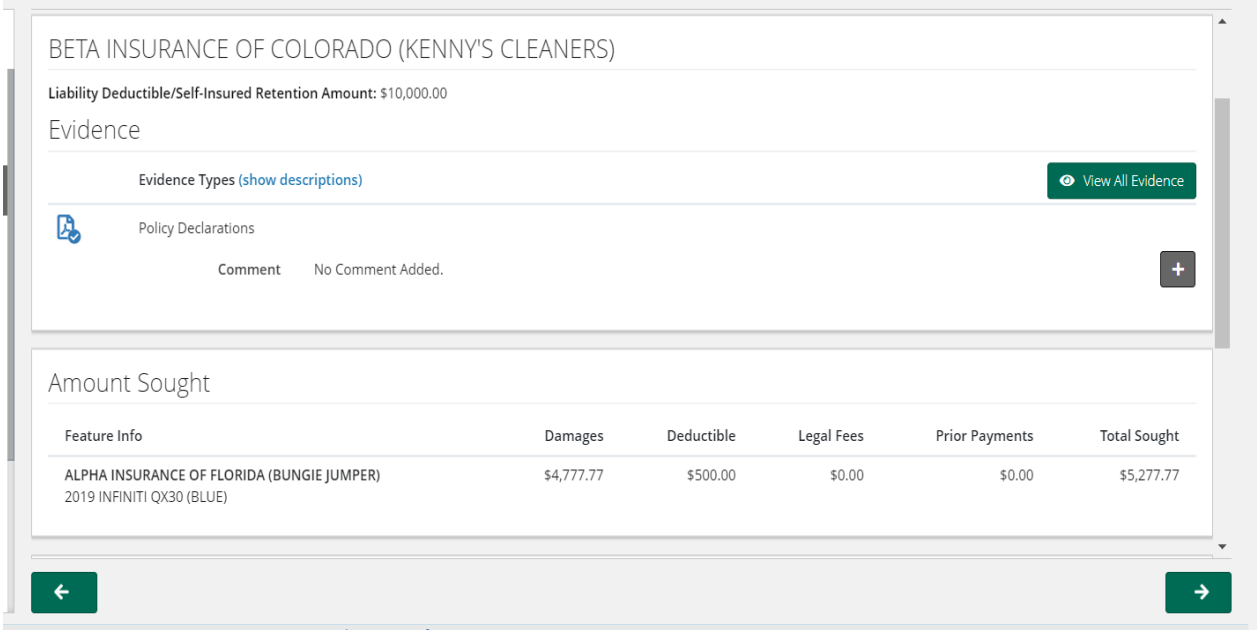
Once you move to the end of the page, you will be asked if the exposures put the policy limit out of jurisdiction. As you can see in the following illustration, the exposures along with the proven damages do put Beta out of jurisdiction for this feature.



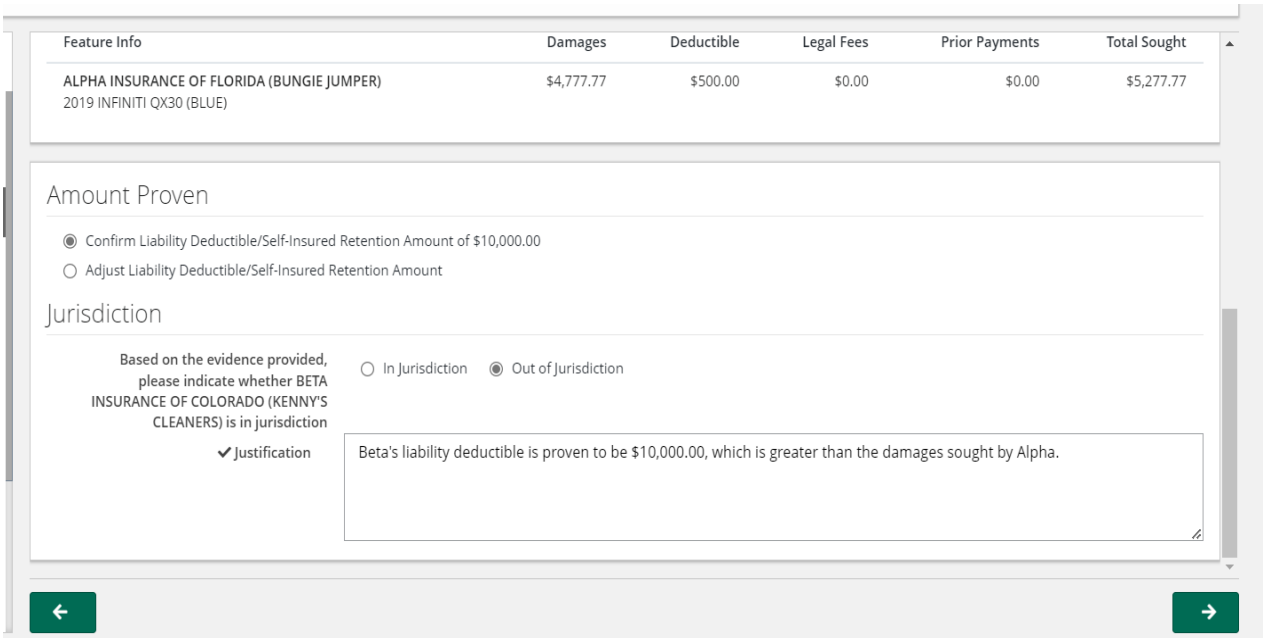

## Liabilities Deductibles

Some cases involve responding companies with a liability deductible or self-insured retained limit (SIR). These are amounts that the responding company's insured is responsible for paying **before** their policy coverage becomes available. It is not unlike the recovering company's collision deductible, with the notable difference that it applies to liability coverage instead. Since AF **does not** have jurisdiction over the liability deductible/SIR, this section will cover ways to handle cases involving liability deductibles or SIRs.

In many cases, the recovering company is seeking damages that are less than the responding company's liability deductible/SIR. In this instance, the responding company should assert a jurisdictional exclusion noting the amount of their liability deductible/SIR.

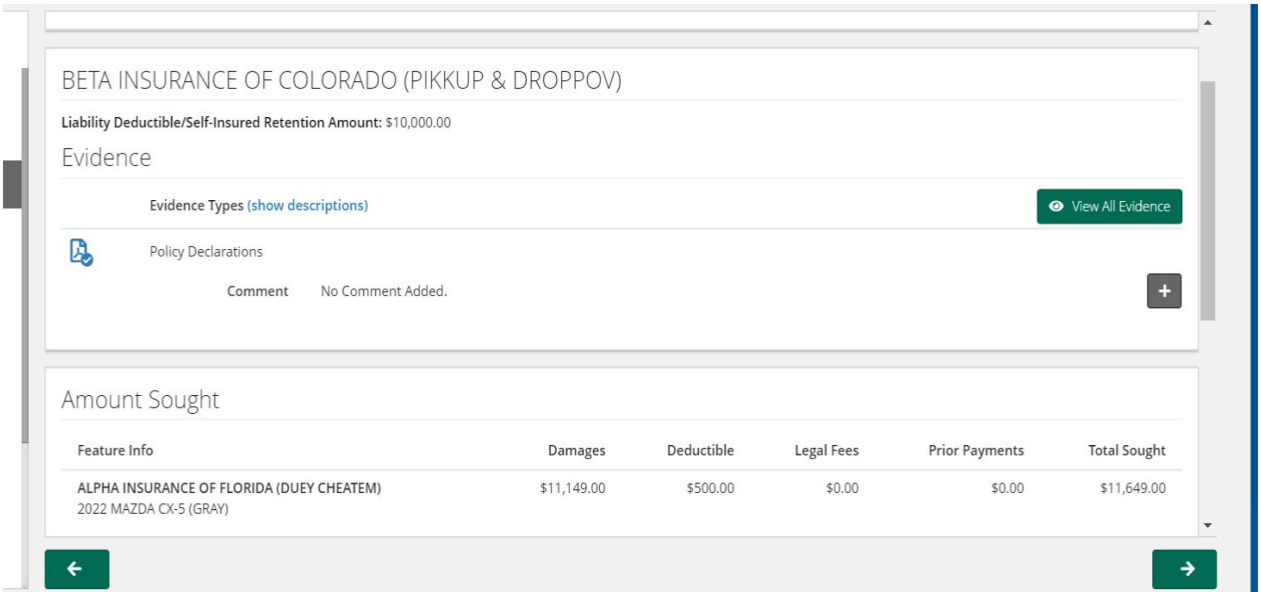


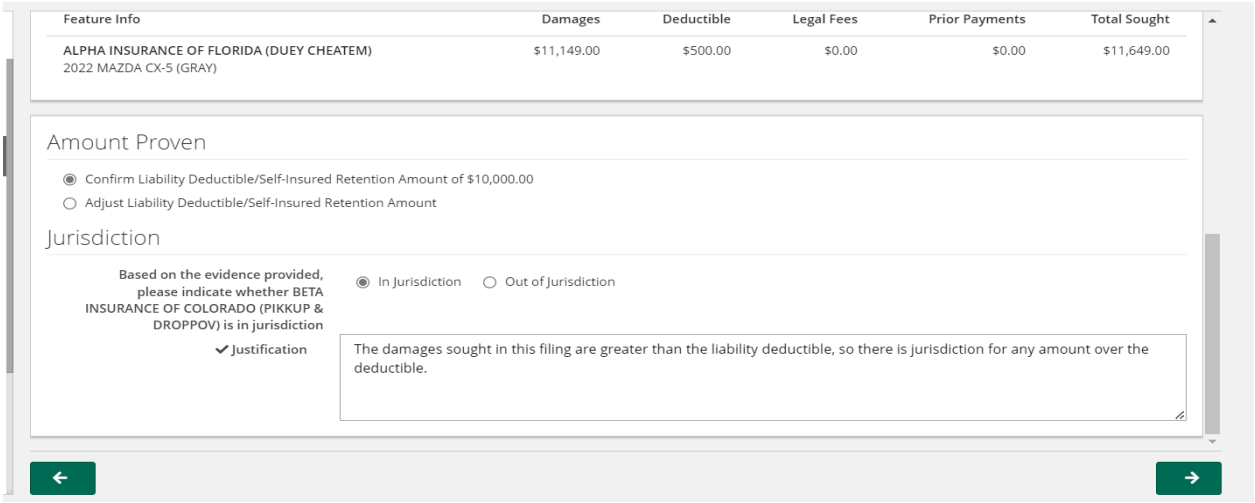

The responding company would include a copy of its declarations page or a screenshot of its coverages to prove the liability deductible, and the arbitrator should grant the jurisdictional exclusion.



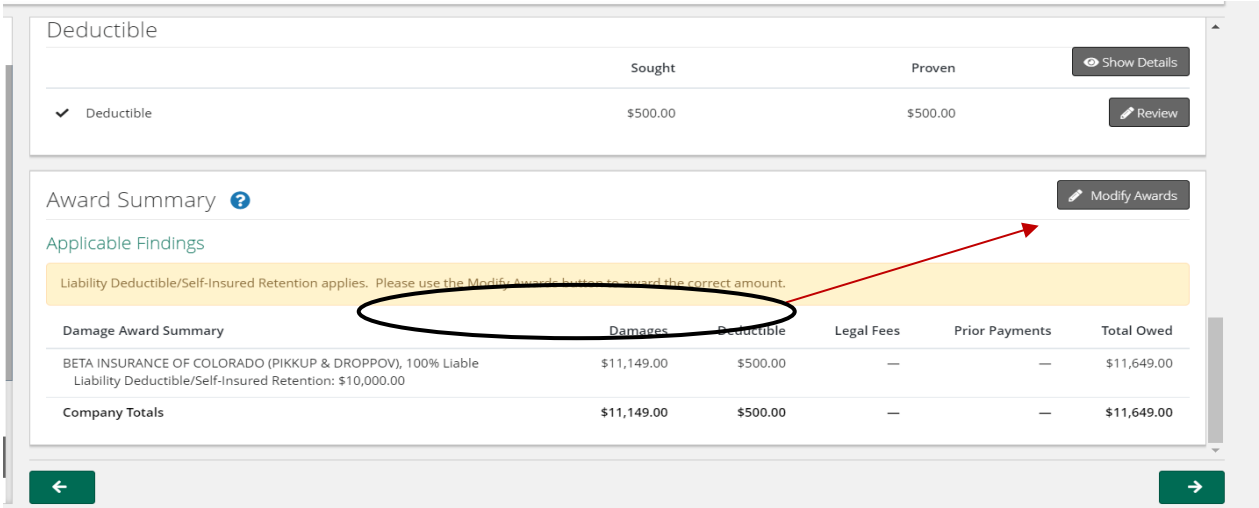

In other cases, the responding company has a liability deductible that is less than the recovering company's damages. If the responding company asserts a jurisdictional exclusion, the arbitrator should determine if the liability assessment and proven damages would result in an award over or under the liability deductible. If the award is less than the liability deductible, the same action as above applies (i.e., granting the jurisdictional exclusion).

If, however, the liability decision results in an award that exceeds the liability deductible, the jurisdictional exclusion should be denied because AF retains jurisdiction over a portion of the award.

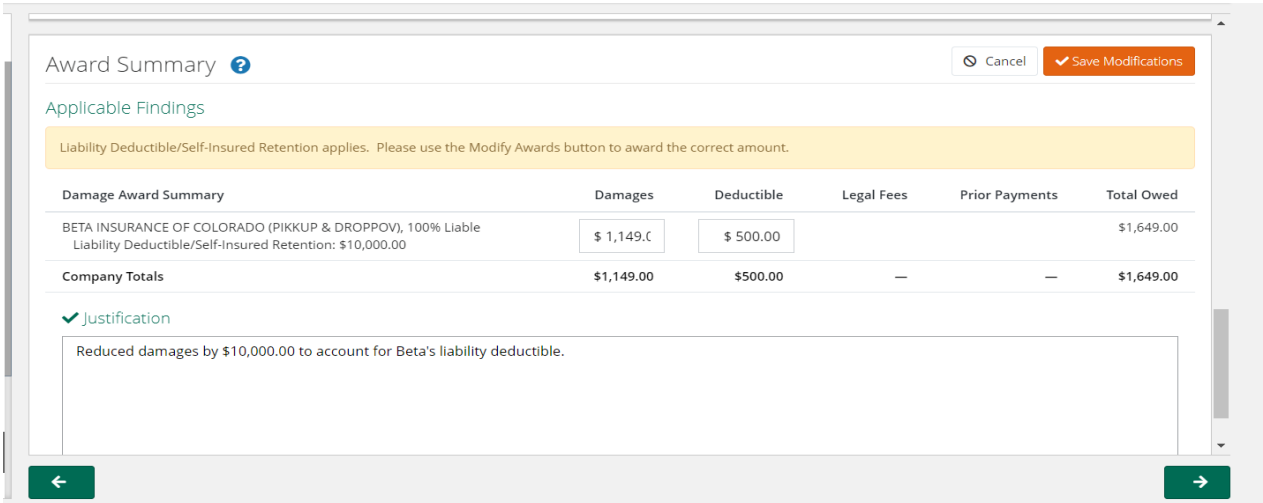



Once the liability decision is entered, the system will calculate the total award in excess of the liability deductible.




The arbitrator will then select "Modify Awards," enter the explanation, and manually reduce the award by the liability deductible amount.




Once you have confirmed that the amounts are correct, you may submit the decision for publication.

## Liability or Recovery Arguments

The Liability or Recovery Arguments section is where the parties present their positions regarding negligence or concurrent coverage depending on the right of recovery on which the filing is based.

NOTE: Should a Recovering company enter their damage justification or rebuttal arguments in the liability or recovery arguments section, those arguments cannot be considered by the arbitrator (see Rule 3-5e). A recovering company's damage arguments must be entered in the Damages Justification/Dispute Rebuttal or Revisit sections for consideration.

It is important to emphasize that a case is not won or lost on the arguments alone. **Arguments are neither true nor false without supporting evidence**. For example, a responding company's allegation of its insured's non-involvement and/or that liability was not proven by the recovering company must not be accepted unless the responding company supports it with some form of evidence.

**Always remember:** Arguments + Evidence = Fact

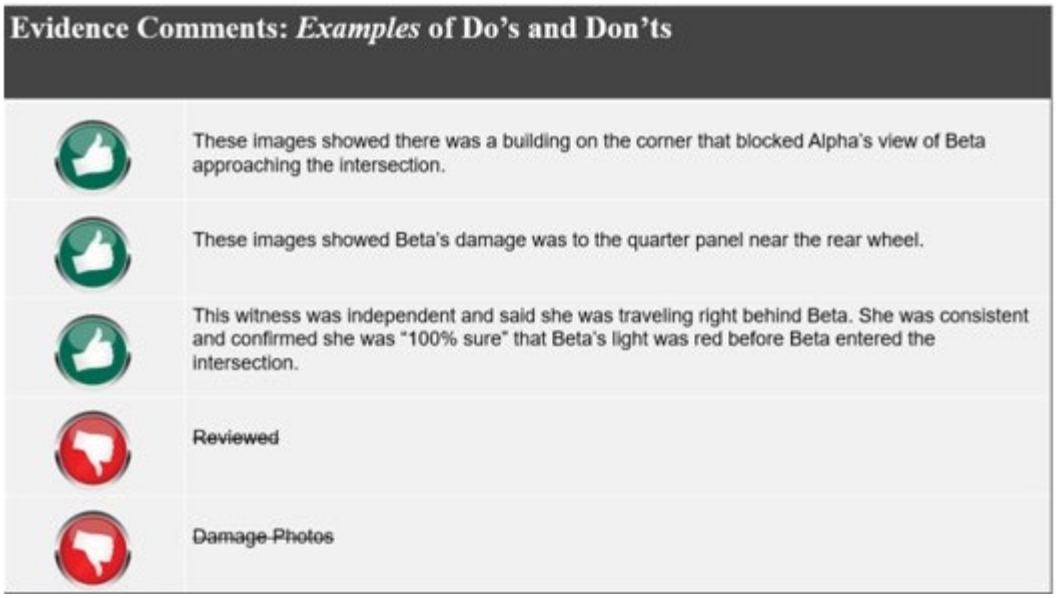
The standard used in intercompany arbitration is "preponderance of evidence," not "beyond a reasonable doubt." In addition, there are no default judgments in intercompany arbitration. The recovering company does not win simply because the responding company did not submit a response. The recovering company must prove its position and support its damages claimed with evidence.

## Evidence

Evidence is attached by the parties to support their liability or concurrent coverage position and damages sought or disputed. An arbitrator may not consider unlisted evidence. Each party must know what evidence is being submitted by the responding company(ies). There is to be no "arbitration by ambush" or surprises when a case is heard.

Typical evidentiary items that you will find include, but are not limited to, written and/or recorded statements (insured, witness, or expert), scene photos, vehicle photos, police reports, diagrams, adjuster notes, estimates, cause and origin reports, and medical records.

When attaching evidence to the file, the parties can determine if they would like to embed evidence directly into the liability or damages arguments. When the evidence has been embedded, the arbitrator must comment on it and summarize its contents. Simply typing "reviewed" or "police report" for a police report is unacceptable.




As noted earlier, there are no formal rules of evidence. This means there is no requirement for a formal recorded statement to be submitted in support of a statement summary. Additionally, there is no expectation that additional evidence, such as a police report or witness statement be submitted in support of a driver's statement. Remember, when hearing a case, all evidence that the parties submit to support their case is to be considered, except as noted in the Auto Forum for damage evidence as stated under Rules 2-1 and 2-5.

## Liability Decision/Breach of Duty

The entry in the "admits ____% liability" field takes precedence over any liability arguments made in the responding company's liability arguments, in most cases. For example, in cases involving a single impact, if the responding company enters "100%" in this field but also makes liability arguments, your liability decision will be controlled by the 100 percent liability admission. If "0%" is entered in this field but no liability arguments are made, you are free to deem that liability is not disputed or at issue and resolve any damages disputed. In cases involving multiple impacts where the responding company may be admitting 100 percent liability for the recovering company's rear damages only, the arbitrator will have the discretion to rule on the disputed front damages. This includes the authority to reduce the total damages awarded to account for disputed or unsupported front-end damage claims, even if the responding company has not formally raised a damage dispute. This discretion is allowed because front-end damage may be interpreted as either a liability issue or a damages issue.

If the responding company admits 100 percent liability, you will not need to make a liability decision. You will proceed to the damages section to rule on any disputed damages or simply verify the amounts claimed if not disputed.

If the responding company admits partial liability, you cannot find it less responsible than the amount admitted. For example, if the responding company admits 75 percent liability, but you feel it is less responsible, your liability decision will be locked at a minimum of 75 percent. This does not prohibit you from attributing more liability against the responding company if proven.

In the Auto Forum, you may hear a case wherein an "innocent" party (i.e., a legally stopped or parked vehicle or a building) seeks recovery from multiple responding companies whose initial accident caused its damages. What do you have to consider when an "innocent" party files arbitration against two or more tortfeasors (or wrongdoers)? For starters, the recovering company must prove that it is, in fact, an innocent party and did not contribute to the accident in any way, or else its award should be reduced by its percentage of liability. The recovering company must also prove that its damages were the direct result of the accident that took place between the responding companies' insureds. If the recovering company proves these two elements, it has met its burden of proof. You will now consider the responding companies' arguments regarding their respective liability. Each responding company must prove that the others' insureds' negligence caused the accident and the recovering company's damages, either completely or to a certain percentage. If the arbitrator can determine the respective liability of the responding companies' insureds, the appropriate awards will be rendered versus each. In closing, if the "innocent" recovering company has met its burden and proven that its damages were the result of the Responding companies' insureds' involvement/actions, and the arbitrator could not determine liability, an award is justified and the recovering company should recover 100% of its damages, split equally between the responding companies. Should a responding company be out of jurisdiction (e.g., no liability policy or coverage denied), the remaining responding company(ies) will only owe its share.

A common question is whether proof of payment is required to prove damages. It is important to distinguish between proof of payment and proof of damages. Proof of payment is required when a responding company, through its answer, asserts the jurisdictional exclusion of subrogation prohibited, arguing that no subrogatable claim exists. However, the responding company cannot rely solely on the absence of proof of payment from the recovering company to make this argument.

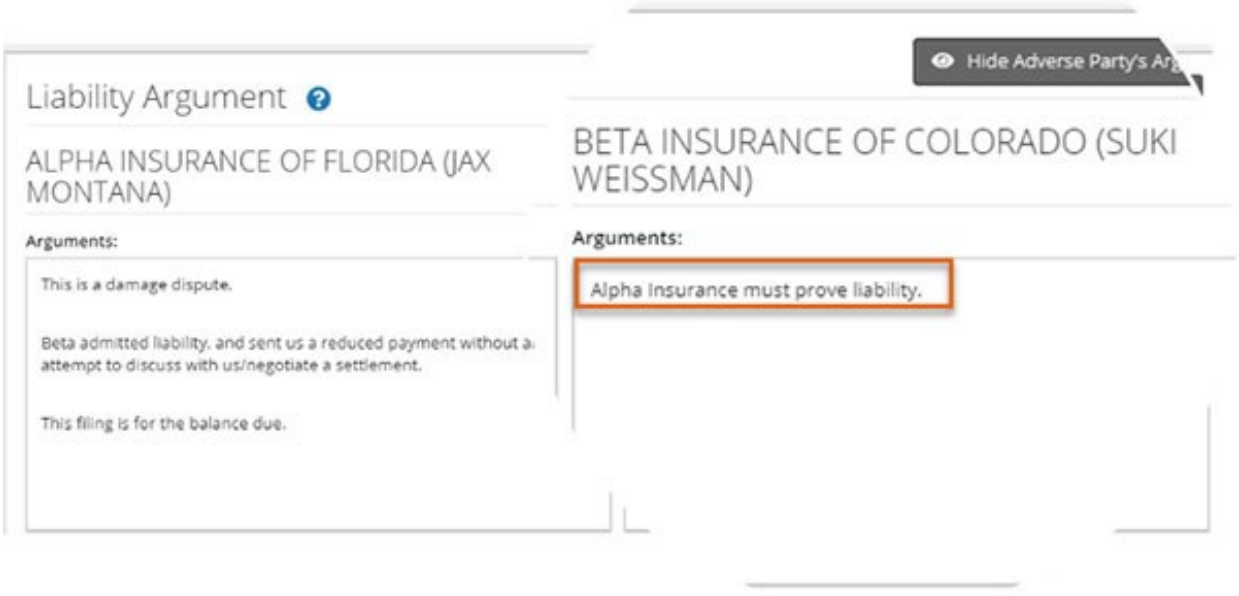
If not challenged, the presumption is the recovering company has made payment to its insured and a subrogation claim exists. A challenge should not simply be raised because the recovering company did not list proof of payment in its evidence listing. We do not want to require the submission of unnecessary documentation. NOTE: The above does not apply to self-insured members that own and repair their vehicles, as a self-insured is not required to make a payment for the loss incurred to their owned vehicle.

## Liability Not Argued and Prior Payments

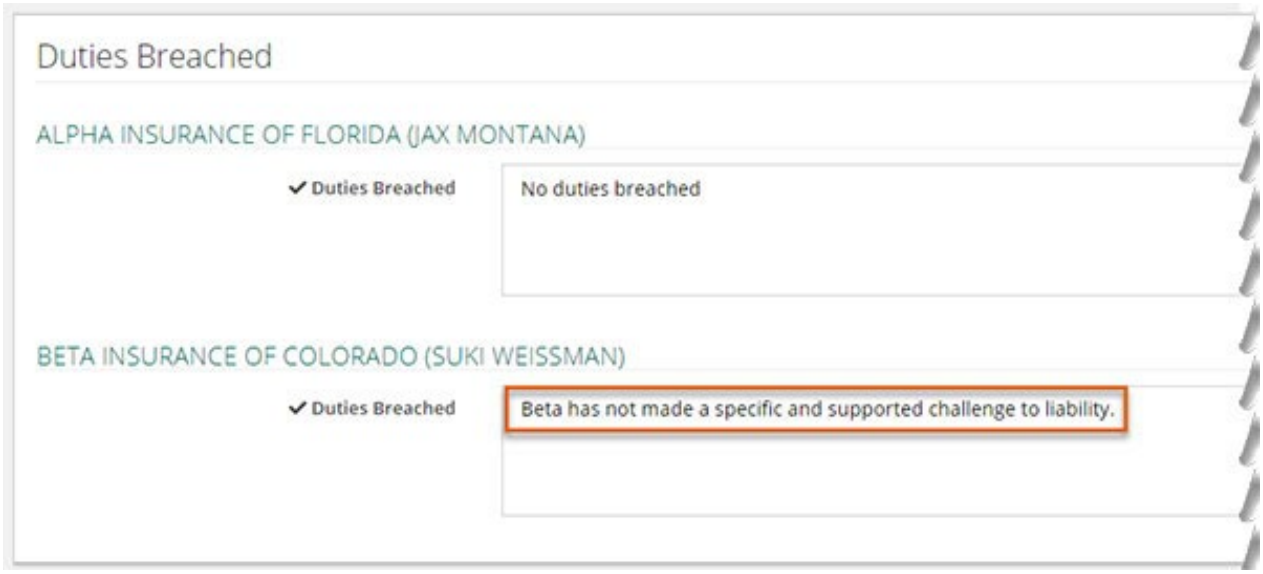
On occasion, the parties may present conflicting arguments regarding liability being in dispute. The recovering company argues that liability has been accepted and only damages are in dispute. The responding company did not admit to any liability (0%) and stated the recovering company has the burden to prove liability but did not offer an alternative liability position. In addition, the responding company acknowledged a prior payment made to the recovering company and disputed the unpaid amount (please see the first three visuals that follow).

If the Recovering company included liability arguments regarding the loss and proved one or more of them that will result in a recovery based on state negligence law, enter the breach of duty, where provided, and continue to hear the damage dispute.

If the recovering company did not include liability arguments, or you are unable to determine a breach of duty, your liability decision entry can be worded to reflect what was entered. For example, "[responding company] has not made a specific and supported challenge to liability." Please see the last visual. Then, continue to hear the damage dispute.

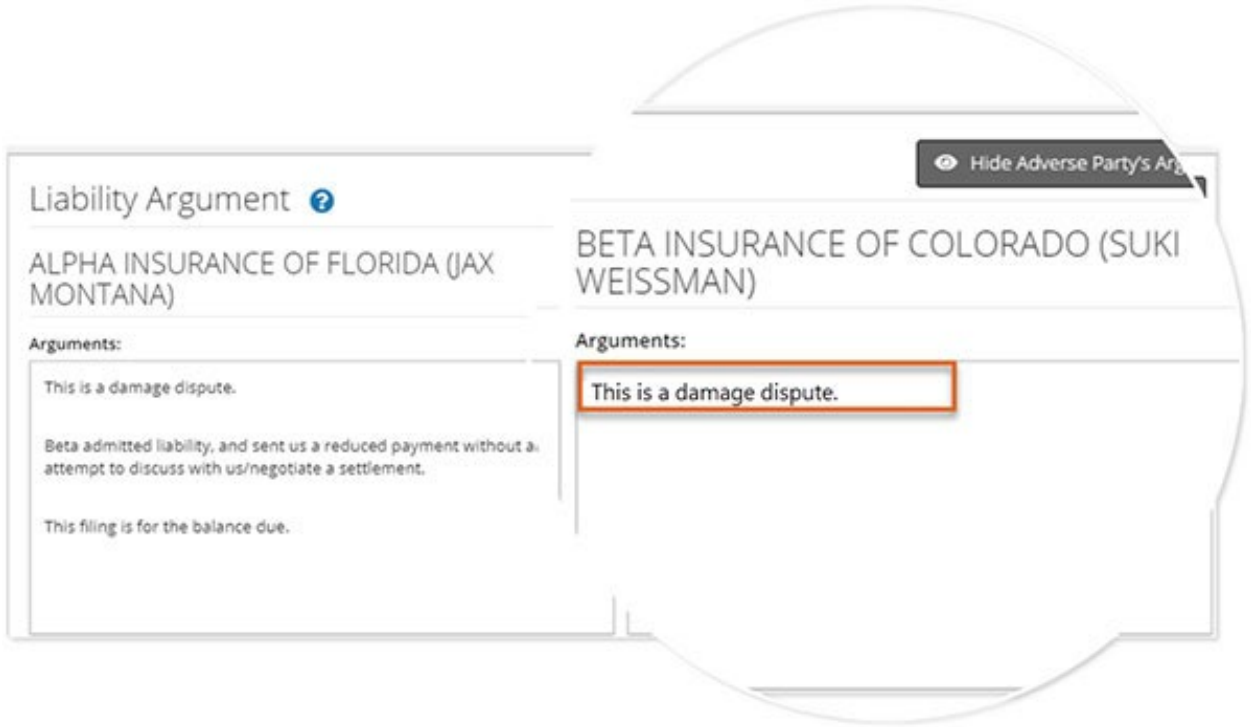







You will also hear cases in which the responding company enters 0% liability and states, "this is a damage dispute" or "see damage dispute" in its liability argument, and its damage dispute is argued where provided in TRS.

It is clear the sole issue in dispute is damages, even though the "% Liability Admitted" field was zero. As noted previously, enter the breach of duty in the liability decision field if you can identify one. If not, it is acceptable to enter "Liability not disputed."





## Burden of Proof

The burden of proof in arbitration is the same as that of a civil court, which is the greater weight (preponderance) of the evidence. The Recovering company is not required to provide indisputable proof or the only possible explanation of what happened. It only needs to show that its explanation of the accident/occurrence is plausible or more likely than alternative explanations.

There is also no requirement for a Recovering company to confirm its insured's statement with a witness statement, police report, or any other evidence. The statement is to be considered an accurate account of what occurred unless there is evidence that proves otherwise.

A preponderance of the evidence also means that all viable alternative explanations need not be specifically ruled out for the applicant to prevail. Many cases are decided within the confines of circumstantial evidence, so, when appropriate, remember it is the totality of the circumstantial evidence that matters and whether that proves a party's argument. In addition, please note that hearsay evidence can be accepted in arbitration. It can be the reliability of the hearsay that the arbitrator needs to address.

## Filings with No Response

As an arbitrator, you might encounter a case in which the responding company fails to submit an answer, leaving you with only the recovering company's arguments and evidence to decide the case.

Consider all the evidence. AF rules of evidence are informal, meaning that all evidence must be considered. For example, do not discount an adjuster's log note summary of a statement in evidence; there is no requirement for a formal recorded statement in arbitration. The totality of the submitted evidence is what matters in determining whether a recovering company has proven its liability arguments. Do not overlook any submitted evidence items, and do not let any personal feelings regarding evidence types deter you from fully considering each evidence item.

It is important to note that the responding company is properly notified each time a case is submitted, and, per AF Rules, the responding company has ample time to submit its reply (30 days). It is the responsibility of the responding company to answer in a timely fashion or to request a deferment if more time is needed.

## Minimal or No Evidence

As an arbitrator, you may hear cases in which the recovering company presents its liability argument and attaches minimal evidence. The responding company will then present its version of the loss, but it provides little to no evidence in support of its argument. While the responding company may have made a compelling argument, remember that an argument is neither true nor false without supporting evidence. The following examples demonstrate this situation.

### Scenario 1

For this loss, the recovering company argues they were backing from their parking space when they saw the responding company begin backing from their space across the aisle. They state they stopped their vehicle, sounded their horn, but the responding company kept backing and hit the recovering company's vehicle. They attached a summary of their driver's statement, which supports their loss facts. The responding company argues when backing they saw the recovering company start backing and that they, the responding company, stopped backing. They argue that the recovering company continued backing and hit their vehicle.

Your first thought might be that this is a word versus word loss, since both parties stated when they saw the other vehicle backing they came to a stop, and the other vehicle struck their vehicle. Keeping in mind that an argument is neither true nor false without supporting evidence, did both parties prove their arguments with evidence?

For this filing, the Recovering company provided a summary of their driver's statement, confirming their description of the loss. Remember to consider all evidence. AF rules of evidence are informal, meaning that all evidence must be considered. Here, do not discount the statement summary since there is no requirement for a formal recorded statement in arbitration. For this filing, the statement summary supports the recovering company's loss facts.

The responding company in their response did not attach any liability evidence in support of their liability argument. Using the weight (preponderance) of the evidence, which parties' evidence supports their argument? Here the weight of the evidence supports the recovering company's argument. The recovering company has met their burden of proof.

### Scenario 2

The recovering company files an arbitration arguing that they were stopped for a red light when the responding company rear ended their vehicle. The recovering company provides their driver's statement and photos of the Drivers' License and Insurance Card for the responding company's female driver. The responding company argues they were not involved in the loss, and they submit a brief statement for an insured, who denies involvement in the loss.

Items to consider: The recovering company's driver's statement supports their version of the loss. The photos of the Drivers' License and Insurance Card supports the responding company's driver was at the scene of the accident. The responding company's statement states they were not involved in the loss.

Using the weight (preponderance) of the evidence, which party's evidence supported their argument? The recovering company not only provided their driver's statement, which summarizes the loss, they provided documentation from the driver of the other vehicle, supporting they were at the loss scene when the accident took place.

The responding company's statement simply states they were not involved in the loss. Based on the preponderance of the evidence, the recovering company's evidence supports the responding company's involvement in this loss.

## Driver Versus Driver and 50/50 Cases

Liability filings involving driver versus driver and 50/50 claims are entirely different situations. A driver versus driver claim is where both parties have conflicting versions of the accident with no independent evidence (i.e., witness statement, point of impact) to corroborate either version. Each carrier stands by its insured's version. The classic example is a red light/green light

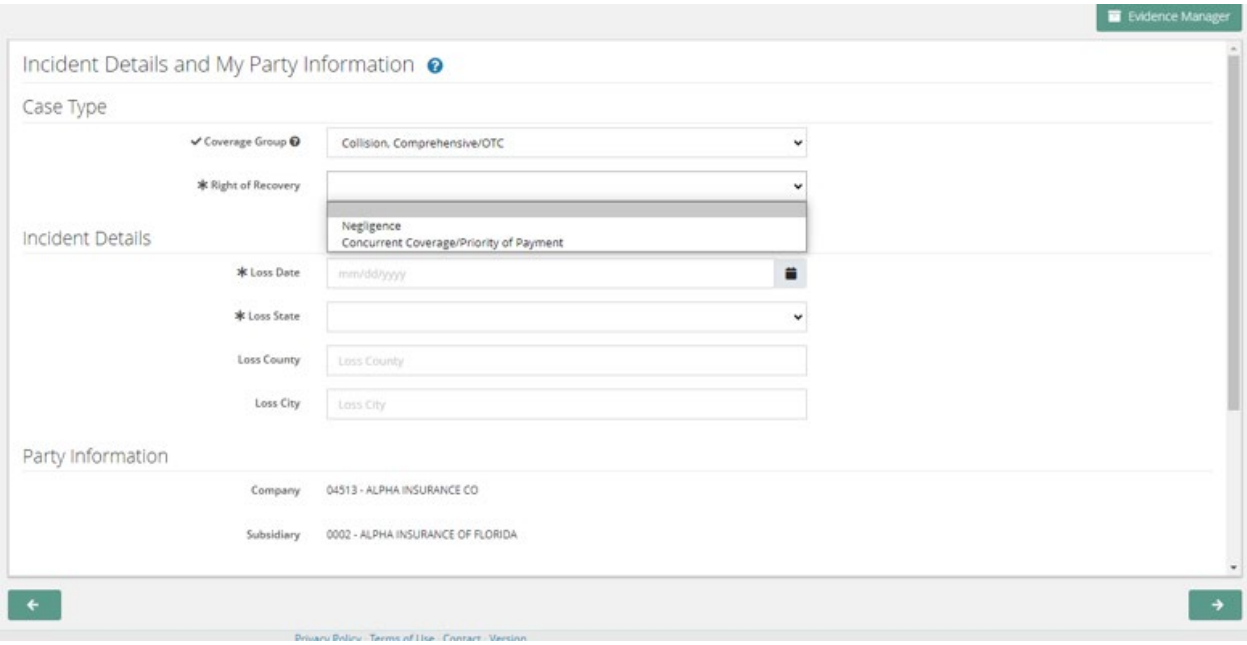
situation with front corner to front corner impact. In this scenario, neither party has met its burden of proof. Who ran the red light and caused the accident? This question cannot be answered because there is insufficient evidence to support one party's version over the other. When hearing this type of case, you cannot simply compromise and find each driver equally liable, since liability must be proven.

Some cases initially appear to be a driver versus driver loss, but there is additional evidence to support one party's liability theory over the other. Using the red light/green light scenario, the vehicle photos show the responding company's right rear quarter panel was the point of impact. In reviewing the statements and evidence, you determine the responding company had control of the intersection, and the recovering company had the last clear chance to avoid the impact. You conclude the points of impact are favorable to the responding company, and its driver's statement is more credible. When rendering your decision, you want to clearly explain your rationale in the liability decision justification comments.

A 50/50 decision constitutes a filing where the loss details are not in question; the evidence clearly supports that both parties are equally at fault. The classic 50/50 loss involves two vehicles that are backing from adjacent parking spaces and back into each other. Another example of a 50/50 accident is when the evidence supports the two vehicles were changing lanes and sideswiped each other. For these types of losses in which both drivers equally contributed to the loss, you will enter that each party proved liability at 50%.

## Concurrent Coverage Disputes

As previously noted, a Recovering company has two right of recovery paths to choose from when submitting a filing – negligence or concurrent coverage. The following section concerns Auto Forum concurrent coverage disputes.




The Auto Forum concurrent coverage platform pertains to first-party damages incurred under a policy or by a self-insured member. A claim may include an itemized list of losses such as towing, storage, rental reimbursement, and salvage expenses, provided they were paid out of the insured's policy or incurred by a self-insured pursuant to statute or judicial decision. However, the disputed claim amount cannot include an insurer's or self-insured's operating expenses (expenses associated with investigating and adjusting losses) or an insured's out-of-pocket expenses. In addition, diminution in value claims is only applicable to states where recovery is permitted pursuant to statute or published case law. Insurer members pay such claims out of the insured's policy; self-insured members that own vehicles incur or pay the damages, and self-insured members that lease vehicles (leaseholder) are charged/billed by the leasing company, via the lease terms, for the vehicle's loss of value.

## Concurrent Coverage Recovery Arguments

The recovery arguments section is where parties present their positions regarding the contractual language, policy language, local law, etc. The parties need to provide evidence to support which party(ies) owes for the incurred loss damages. The arbitrator may not consider recovery arguments in any other section or raise recovery arguments on any party's behalf.

Should a responding company assert the jurisdictional exclusion of coverage denied and provide a denial of coverage letter to its insured, the arbitration will retain jurisdiction if the denial is based on concurrent coverage. Rule 2-4 states: "Where the denial concerns concurrent coverage, the case will be heard, and the arbitrator will consider and rule on the coverage defense." This is the issue in dispute and is to be decided by the arbitrator. A coverage denial based on concurrent coverage/primacy of policies (i.e., primary/excess application of the disputed coverage) does not

remove the party/case from the arbitration's jurisdiction. If, however, a responding company pleads no liability policy was in effect or a complete denial of coverage based on a policy provision not related to concurrent coverage, arbitration will lack jurisdiction over the party/case.

## Feature Damages

The recovering company itemizes the damages to support its total company claim amount (i.e., auto damage, rental, and towing in the Auto Forum). It might also include a prior payment received from the responding company. The recovering company must also support its damages (i.e., estimates, total loss documentation, and/or rental invoice).

If a responding company disputes damages, it must present its damage arguments and the proposed amount owed, if any. This includes issues such as repair costs, rental duration, causation, and partial exclusions. As an arbitrator, you may not consider damage arguments raised in any other section (i.e., the liability arguments [see Rule 3-5e]).

The more detailed the damage dispute is with supporting evidence and proposed amounts, the easier it will be for you to resolve. A responding company arguing that the recovering company overpaid the claim, or that the "rental was excessive" without a specific reason or a suggested amount of damages will make it difficult for you to consider the argument or agree with the responding company's position. You would have the discretion to deny the responding company's damage dispute (award all proven damages) and explain this in the Damages Justification field. The exception is when the responding company has not been provided with the damage's proofs. This is the scenario the "if known" (in Rule 2-5) is intended to address. Specifying the disputed dollar amount(s) necessitates that information as to what the recovering company is seeking has been shared. As such, in the scenario where proofs have not been provided, you would be free to reduce the amount of damages at your discretion, based on the evidence, so long as the responding company made its argument in the Disputed Damages section. (This does not apply to Auto since damages evidence is viewable by the parties.)

Another scenario that may arise is where a responding company disputes damages based on the absence of a settlement attempt prior to filing the arbitration. The preamble, or **condition precedent**, to the Rules states that "the parties should attempt to settle the subject dispute prior to filing arbitration." The word *should* indicates a recommendation not a requirement. The absence of a settlement attempt prior to filing is not a bar to recovery. In this scenario, as previously, simply verify that the Recovering company's damages are supported.

In the typical scenario involving disputed damages, you must review the points of difference between the parties and decide the case based on the arguments and evidence presented. You must accurately record the amount of proven damages in the Damages Decision space provided on the Online Decision Entry screen. The TRS application will then apply the liability percentage to the amount of damages proven to determine the award. On occasion, a partial

payment may have been made/received, and the Recovering company is seeking the balance of the claim. In these cases, make sure the TRS application calculated award amount accurately depicts the amount that the Recovering company is owed based on the claim amount, liability assigned, and partial payment. You might also have to use the award modification functionality to adjust the award.

NOTE: Damages should not be awarded for less than the responding company's proposed amount, since this is the amount they deem reasonable or are willing to pay. An exception would be when the responding company makes a math error or typo. For example, the responding company argues they owe 15 days of rental at $30.00 per day for $450.00. In error, the responding company enters $500.00 into the proposed amount field. The arbitrator can correct the responding company's input error and award the proven $450.00.

### Example

Liability Decision: The recovering company (ABC Ins.) proved liability at 80 percent versus responding company (XYZ Ins.) based on "XYZ's failure to yield the right of way when making a left turn. ABC's liability was 20 percent for failure to keep a proper lookout."

Damages Decision: The recovering company (ABC Ins.) proved "reduced damages" based on "XYZ's proof that rental was excessive and that it only owed 10 days at $35 or $350 total."

If the award does not follow a percentage but rather an area of damage (e.g., rear-end damages proven), you will need to use the award modification option so that the proper award amount is entered. For example, XYZ is only liable for ABC's rear-end damages. Instead of basing the award on the proven liability percentage, you would award the amount that was proven for the rear-end damages.

When damages are disputed, the award will be either the amount that the recovering company has proven, the reduced amount proven by the responding company, or an amount the evidence supports. An arbitrator is not to simply "split the difference" for the sake of compromise. The evidence must support the recovering or responding company's position or another proven amount.

## Auto Forum Example

The recovering company's itemization of damages lists the following:

- Collision payment = $4,300
- Rental = $600 (20 days at $30/day)
- Total company-paid damages = $4,900

The responding company argues that only 15 days of rental is owed, as repairs should have been completed in this timeframe. The responding company's damages area should explain why the full amounts are not owed and outline the amounts owed.

- Collision owed = $4,300
- Rental owed = $450
- Proposed Amount = $4,750

As the arbitrator, you must decide if the responding company's allegations are supported based on the evidence submitted. You will award the full damages if the responding company's arguments are not supported. You will award the responding company's amount if its arguments are supported, and the damage dispute is presented in accordance with Rule 2-5. If the evidence supports awarding damages that differ from what the recovering company incurred or what the responding company believes is reasonable, the arbitrator has the discretion to award the alternative amount and cite how the evidence supports it.

Your damage decision justification will provide clear and concise reasoning regarding your decision, for example: "The responding company proved via repair estimate that the repair should have been completed in 15 days, not 20 days. Accordingly, the Recovering company is awarded the reduced amount of $450 for rental."

If a responding company raises a damages argument in accordance with Rule 2-5, you should review the recovering company's evidence and damage dispute rebuttal, if applicable, to respond to the dispute. The responding company must provide a valid reason for its dispute (causation, pre-existing damages, reasonable and necessary, ACV versus RCV, etc.) and not simply indicate "we dispute all damages."

If the responding company does not dispute damages in the Disputed Damages section, as per Rule 2-5, damages are not at issue. The damages sought by the recovering company are to be awarded if liability is proven and the amount of damages sought is supported by evidence.

A common situation is when one carrier believes its insured's damages were solely caused by a vehicle that struck it in the rear and pushed it forward into a third vehicle. The insured that struck the middle vehicle in the rear (and allegedly pushed it forward into another vehicle) argues that the middle vehicle struck the vehicle in front of it first (he/she saw the impact), and as such, it only owes for the rear damages.

When confronted with this type of case and the filing company has not separated its damages, it is at your discretion to:

1. Review the estimate and calculate the correct amount of damages to award.

2. Approximate the damages based on impacts and severity (i.e., if most damages are to the rear and rear damages are owed, award a greater percentage of the total damages). Be sure to show your math and explain your rationale.
3. If you are unable to approximate the damages, adjourn the hearing and request the filing company break down its damages, front versus rear. To adjourn the file and request clarification, use the **Create Arbitrator Support Inquiry** functionality to request the Recovering company provide a breakdown of front and rear damages.

Regarding a bodily injury settlement, medical reports are not required unless the extent of the injury and/or causation is challenged in the Damages Dispute section.

**Damage Award Calculations in Concurrent Coverage Cases**

In concurrent insurance coverage cases, determining damage awards involves applying specific mathematical rules based on the nature of the coverage—whether **primary** or **co-primary**—and the **deductibles** involved. This section outlines examples that illustrate how damages are calculated under different scenarios. Each example assumes **gross damages of $4,684.57**.

Please note that there are six examples. The first three examples address a responding company being solely primary. The remaining three examples address co-primary awards.

**Responding Company Primary Coverage Scenarios**

The responding company is solely responsible for covering the damage, subject to its policy deductible. Only **one deductible** applies—the deductible of the **primary responding company**.

**Example 1: Same Deductible Amounts – Responding Company Primary**

- **Deductibles**: Filing Company = $1,000 | Responding Company = $1,000
- **Rule**: Only one deductible applies—the primary responding company's deductible.
- **Calculation**:
    - Gross Damages: $4,684.57
    - Deductible Applied: $1,000
    - **Award**: Responding Insurer reimburses **$3,684.57**
    - **Note**: No reimbursement for the deductible.

**Example 2: Lower Responding company Deductible – Responding Company Primary**

- **Deductibles**: Filing Company = $1,000 | Primary Responding Company = $500
- **Rule**: Only one deductible applies—the primary responding company's deductible.

- **Calculation**:
    - Gross Damages: $4,684.57
    - Responding company's Deductible Applied: $500
    - **Award**: Responding Insurer Reimburses **$4,184.57**
    - **Note:** The insured incurs a $500 deductible. The insured is reimbursed $500 for the deductible difference.

**Example 3: Higher Responding company Deductible – Responding Company Primary**

- **Deductibles**: Filing Company = $500 | Primary Responding Company = $1,000
- **Rule**: Only one deductible applies—the primary responding company's deductible applies.
- **Calculation**:
    - Gross Damages: $4,684.57
    - Deductible Applied: $1,000
    - **Award**: Responding Insurer reimburses **$3,684.57**
    - **Note:** The filing company absorbs the $500 deductible difference. The insured incurs a $500 deductible.

**Co-Primary Coverage Scenarios**

When policies are deemed **co-primary**, both companies share responsibility. The policies unite to make a single primary policy. However, only **one deductible** applies—specifically, the **lower of the two**. The deductible is applied to the total damages, and the remaining amount is split between the companies. The company with the **lower deductible** pays the **deductible difference**.

**Example 4: Same Deductible Amounts – Co-Primary**

- **Deductibles**: Both Companies = $1,000
- **Rule:** Only one deductible applies to the vehicle owner's damages.
- **Calculation**:
    - Gross Damages: $4,684.57
    - Deductible Applied: $1,000
    - Net Damages: $3,684.57

- Each Company Pays:
    - Company A: $1,842.29
    - Company B: $1,842.28
- **Note**: The insured incurs a $1,000 deductible.

**Example 5: Lower Responding Company Deductible – Co-Primary**

- **Deductibles**: Filing Company = $1,000 | Responding Company = $500
- **Rule**: Only one deductible applies to the vehicle owner's damages. The lower of the two deductibles is incurred by the vehicle owner.
- **Calculation**:
    - Gross Damages: $4,684.57
    - Filing company's Deductible: $1,000
    - Net Damages: $3,684.57
    - Each Companies' Share:
        - Company A: $1,842.29
        - Company B: $1,842.28
        - Deductible Difference: $500 (paid by the responding company)
    - **Final Award Payments**:
        - Filing Company: $1,842.29
        - Responding Company: $2,342.28 ($1,842.28 share + $500 deductible difference)
        - The insured incurs a $500 deductible. The insured is reimbursed $500 for the deductible difference.

**Example 6: Higher Responding Company Deductible – Co-Primary**

- **Deductibles**: Filing Company = $500 | Responding Company = $1,000
- **Rule**: Only one deductible applies to the vehicle owner's damages. The lower of the two deductibles is incurred by the vehicle owner.
- **Calculation**:
    - Gross Damages: $4,684.57

- Responding Company's Deductible Applied: $1,000
- Net Damages: $3,684.57
- Each Company Pays:
    - Company A: $1,842.29
    - Company B: $1,842.28
    - Deductible Difference: $500 (absorbed by the filing company)
- **Final Award Payments**:
    - Filing Company: $2,342.28 ($1,842.28 + $500 deductible absorbed)
    - Responding Company: $1,842.29
    - The insured incurs a $500 deductible.

**Key Takeaways**

- In **primary coverage**, the **primary company's deductible** always applies.
- In **co-primary coverage**, the **lower deductible** applies to the vehicle owner, and the **company with the lower deductible pays more**.
- The **insured never incurs more than one deductible**, and it is always the **lower of the two** in co-primary cases.

## Shared Evidence (Auto Forum Only)

For arbitrations filed in the Auto Forum, Rules 2-1 and 2-5 explain that the recovering and responding parties must attach their damage evidence to the damages feature or disputed damages. Attaching the evidence to these specific areas makes the evidence viewable to the other party(ies).

The explanation for Rule 2-1 gives guidance for times when the recovering company does not attach evidence to the damage feature. The explanation reads, "When the recovering company does not properly attach evidence to the Feature Damages workflow step to support its feature damages sought and this is raised by the responding company in the damage dispute section, the evidence will not be considered by the arbitrator and the damages will not be awarded. An exception is where the responding company has disputed specific damages because the documentation was previously shared."

In other words, Rule 2-1 only becomes relevant when the responding company raises the issue in its damage dispute; however, as Rule 2-1 states, when the responding company has disputed specific damages, the shared evidence argument is not valid.

Another situation you will come across when hearing cases is when the recovering company submits rebuttal evidence to refute the responding company's damage arguments. The following examples demonstrate when the submission of rebuttal evidence on revisit is acceptable.

## Scenario 1

Alpha attaches their repair estimate, which includes a line entry for towing. The attached estimate supports both the auto and towing damages entered separately under the damages section. This evidence is adequate to support the amount entered for the auto and towing damages.

Beta argues that an invoice is needed to support the towing damages. They contend the line item listed for towing on the estimate does not prove the towing damages. When revisiting the filing because of the damage dispute, Alpha submits its towing invoice to rebut Beta's damage argument.

Alpha argues in its rebuttal that the vehicle was towed to the body shop from the accident scene. The body shop paid the towing damages and included those damages in the repair estimate. Alpha explains the vehicle was not drivable and that the damages are related and were necessary. It argues Beta would have incurred the same damages had it settled the loss. It noted it has attached the towing invoice as requested by Beta.

In this situation, the allowance of the rebuttal evidence is acceptable for two reasons. The first being that the repair estimate submitted when the Recovering company filed the arbitration supported the towing damages. The second reason is because the towing invoice was submitted to directly refute the damage dispute.

The second example that follows illustrates when attaching evidence to the damage feature during the revisit is not acceptable and cannot be considered by the arbitrator.

## Scenario 2

Let's use the same example, except this time Alpha's estimate does not include a line entry for the towing damages. Again, Alpha only attaches its repair estimate to its damage feature. Beta argues the viewable evidence does not support the towing damages sought by Alpha. It states a towing invoice should have been submitted to prove the towing damages.

When revisiting the file, Alpha argues the towing damages were initially paid by the body shop, which Alpha later reimbursed. It has attached the towing invoice to the damage feature in support of the towing damages.

For this scenario, the towing invoice submitted as rebuttal evidence would not be acceptable. This is because the evidence attached to the damage feature when the filing was submitted did not support the towing damages Alpha was seeking.

### Scenario 3

In this example, Alpha seeks their total loss damages. When submitting their filing, Alpha attached a total loss evaluation to support the amount claimed under the valuation section. Beta argues that without an estimate, Alpha has not proven the damages meet the criteria for a total loss.

Upon revisiting the damage dispute, Alpha submits their repair estimate to justify their decision to declare the vehicle a total loss. This submission is permissible, as it directly addresses and refutes Beta's damage dispute. As the arbitrator, you will evaluate the arguments and evidence presented by the companies to determine if Alpha has adequately supported their decision to render the vehicle a total loss.

*Note: Only filings submitted in the Auto forum require damage evidence to be viewable to all parties within the filing.*

## Appearance Allowances

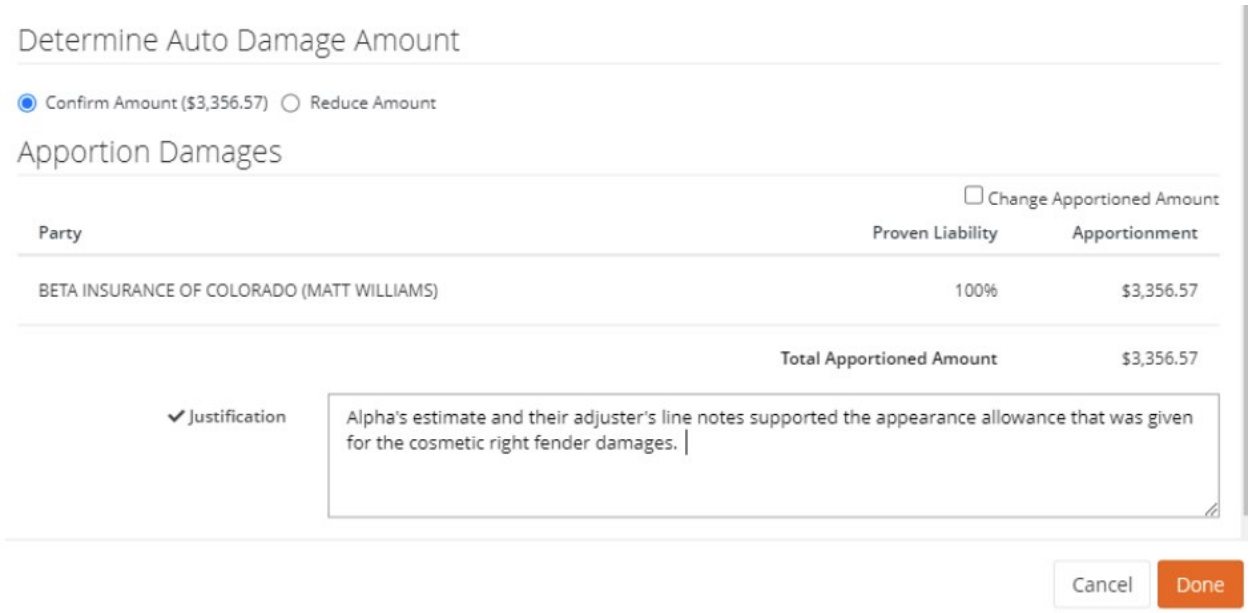
One of the more misunderstood issues when hearing damage disputes is appearance allowances. First, what is an appearance allowance? An appraiser may offer an appearance allowance (compensation) for minor cosmetic damages that may not be clearly visible but could be expensive to repair. This can become confusing for an arbitrator when the recovering company applies both a deductible and an appearance allowance on the same estimate. In this example, the gross damages without the appearance allowance total $3,656.57. There is a $500.00 deductible, which is reduced to $300.00 due to the application of the $200.00 appearance allowance. The estimate supports net damages totaling $3,356.57 ($3,556.57 - $500.00 + $200.00) as shown in the example below.

**ESTIMATE TOTALS**

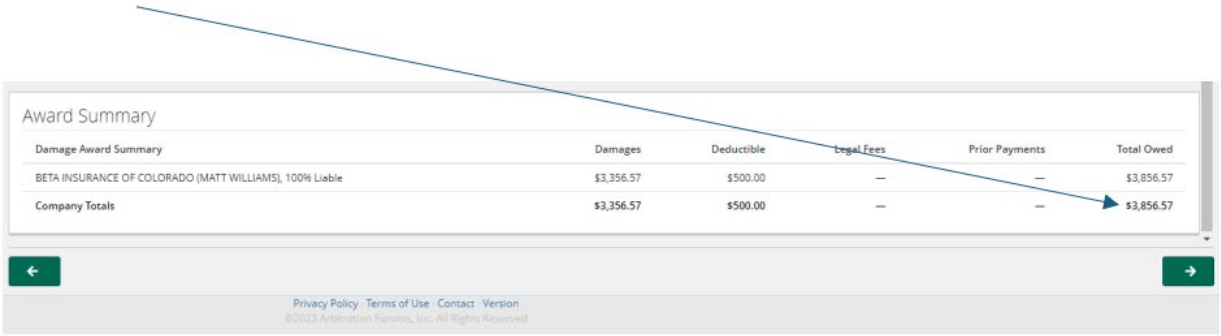
| Category | Basis | | Rate | Cost $ |
|---|---|---|---|---|
| Parts | | | | 1,550.82 |
| Body Labor | 12.9 hrs | @ | $ 55.00 /hr | 709.50 |
| Paint Labor | 7.2 hrs | @ | $ 55.00 /hr | 396.00 |
| Mechanical Labor | 2.4 hrs | @ | $ 95.00 /hr | 228.00 |
| Paint Supplies | 7.2 hrs | @ | $ 47.00 /hr | 338.40 |
| Miscellaneous | | | | 99.95 |
| Other Charges | | | | 3.00 |
| Subtotal | | | | 3,325.67 |
| Sales Tax | $ 3,325.67 | @ | 9.9500 % | 330.90 |
| **Total Cost of Repairs** | | | | **3,656.57** |
| Deductible | | | | 500.00 |
| Appearance Allowance | | | | -200.00 |
| **Total Adjustments** | | | | **300.00** |
| **Net Cost of Repairs** | | | | **3,356.57** |

When seeking damages for this arbitration, the Recovering company is seeking auto damages totaling $3,856.57. This amount includes  $3,656.57, the Total Cost of Repairs (including the $500.00 deductible), plus the $200.00 appearance allowance. The recovering company is allowed to seek the recovery of their appearance allowance in the Auto Forum, since the appearance allowance is for damages that were incurred by the recovering company. Remember, the appearance allowance is not a deductible credit; it is to compensate the insured for loss-related damages that were not repaired. Below, you will see the damage decision entry page. Here, the recovering company is seeking auto damages, which include the appearance allowance less the deductible ($3,656.57 + $200.00 - $500.00 = $3,356.57).

After your review of the damage arguments, rebuttals, and evidence, you will determine if the recovering company has proven the disputed appearance allowance. For this filing, after the arbitrator's review, the arbitrator concluded the recovering company's estimate supported the appearance allowance, as noted below.




Once the decision entry is complete, the arbitrator will click the "Done" button. The arbitrator confirmed the $500.00 deductible was supported and clicked the "Accept" button. For the award summary, you see that the auto damages, which included the appearance allowance and the deductible, have been awarded in the amount of $3,856.57.




The key point to remember is while the estimating system will apply the appearance allowance to the deductible, it is not a deductible credit. The appearance allowance is for the reimbursement of cosmetic damages that were not repaired. The appearance allowance is not included in the net repair costs or the deductible, and if proven, is owed in addition to the net auto damages and deductible.

## Total Loss Versus Repair

A common dispute argued in arbitration is that the recovering company should have repaired their vehicle, instead of declaring the vehicle a total loss, or vice versa. First, let's discuss when a vehicle is thought to be a total loss. Typically, an insurance company will consider a vehicle a total loss when the repair costs are greater than the vehicle's market value (ACV), the estimated

repair cost meets the state's total loss threshold, or when the vehicle cannot be repaired due to extensive damages (structural total loss). If the decision to total the vehicle is in dispute, the responding company will likely argue that none of these three factors were met. The recovering company may rebut the dispute explaining how their decision to total the vehicle was justified.

To support their damage arguments, the recovering and responding companies will need to provide evidence to prove their position on whether the vehicle was a total loss. Some common types of evidence are:

- The repair estimate
- Vehicle photos showing the extent of the damage
- Salvage recovery documentation
- Salvage quote
- Adjuster notes detailing the reason for totaling the vehicle

Once the arbitration has been submitted for hearing, the arbitrator will weigh the arguments and rebuttals presented. The arbitrator will then review the submitted evidence to determine which party supported their position.

What happens when the responding company raises the total loss versus repair argument only under the valuation? For this example, the arbitrator determined it was not proven the vehicle met the criteria of a total loss. The arbitrator then awarded the supported auto damages under the valuation section.

A potential issue arises for the arbitrator since the responding company did not dispute the associated tax amount, fees, teardown costs, salvage expense, and salvage recovery entries. This damage is clearly related to the total loss settlement; however, there were no specific damage arguments entered.

While arbitrators are instructed not to raise arguments on behalf of either party, in this scenario, the damages are part of the total loss settlement. By not disputing these damages, the responding company may benefit if the damages are awarded, especially when the salvage recovery amount is applied.

Since the tax amount, fees, teardown costs, salvage expense, and salvage recovery entries are considered components of the total loss dispute raised under the valuation section, the arbitrator would reduce these damages to zero. This adjustment fully resolves the total loss versus repair dispute. This aligns with the arbitrator's determination that the recovering company failed to justify its decision to declare the vehicle a total loss.

## Loss of Use

As an arbitrator, you will sometimes hear cases in which the recovering company seeks loss of use damages. Loss of use is defined as "insurance meant to cover the cost of a rental vehicle or other alternative transportation that is used during the time the damaged vehicle is not available for use."

Loss of use coverage should not be confused with loss of income or loss of revenue claims. Loss of revenue is when a business loses income because of downtime related to the vehicle damages that were incurred due to the loss. Loss of income is for damages a driver or passenger may incur due to injuries from the loss.

Below are some things to consider when hearing a filing in which loss of use damages are sought:

- The recovering company could submit evidence to support that the loss state allows for the recovery of loss of use. It also might submit evidence in support of the number of days allowed and the daily rate reimbursed for the damages. The recovering company may also submit evidence to support its policy has loss of use coverage.
- If the loss of use damages are disputed, the responding company could submit evidence that support loss of use is not recoverable in the applicable loss state. The responding company may also submit evidence to refute the number of days that are being sought or the daily rate the recovering company is seeking.

As always, an argument alone is neither true nor false without supporting evidence. All decisions should be based on the arguments presented and evidence submitted to support the parties' positions. Last, as the arbitrator, you should not allow your preconceived notions to influence your decision.

## Electronic Proofs of Damages

Today, commerce is less dependent on paper transactions, and the arbitration process needs to recognize this evolution. AF's members are looking to eliminate unnecessary expenses and have identified the cost of mailing checks or drafts as falling into this category. Two of the invoice types that we have seen change from paper to electronic are towing and rental. It is common for the recovering company to provide electronic proof of damages without the corresponding physical invoice. Knowing that the recovering company does not possess a traditional bill due to its electronic connection with certain vendors, these proofs of electronic damages can be considered.

Note: Electronic proof of damages should not be confused with electronic proof of payment. Proof of payment confirms that a payment has been issued for the damages. In contrast, proof of

damages refers to documentation that supports the amount charged for a specific allowance, such as rental or towing damages.

## Credit for Prior Payments

Arbitrators will hear cases in which the responding company has made a prior payment(s) to the recovering company. This section will review several common scenarios and provide guidance on how the prior payments should be recorded.

The key issue the arbitrator must resolve regarding an alleged prior payment(s) is the following: Did the alleged prior payment clear the recovering company's bank? Clearing the bank means the issued payment was cashed/deposited by the Recovering company.

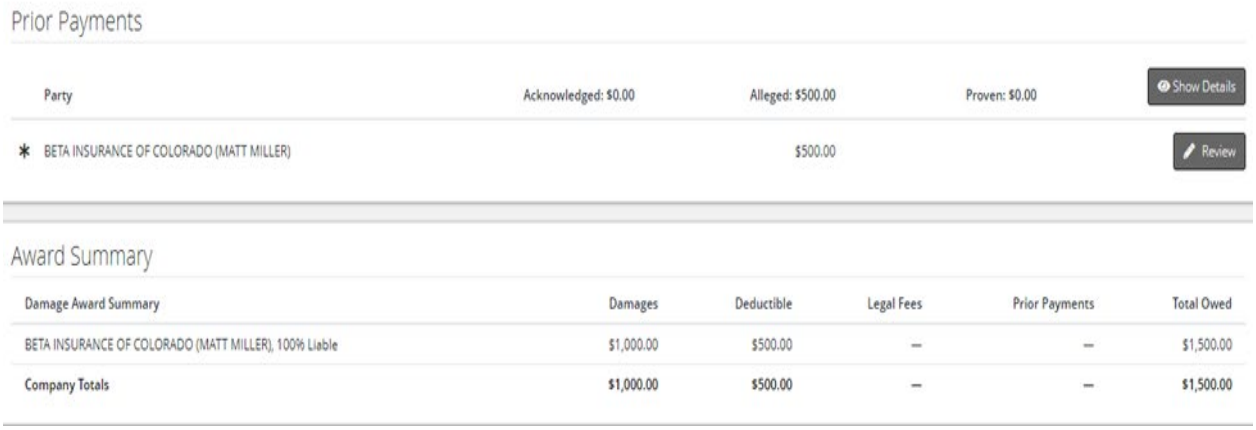
The wording that each company uses in its proofs varies. If the issued payment was cashed/deposited, it may appear with a date of payment or use status terms such as *Paid*, *Cleared*, *Honored*, etc., to show it was cashed/deposited. These payments, including those made via electronic funds transfer (EFT), should be credited against any potential award so long as the payment pertains to the damages sought.

We have included several examples of situations you may encounter when hearing a case with alleged prior payments.

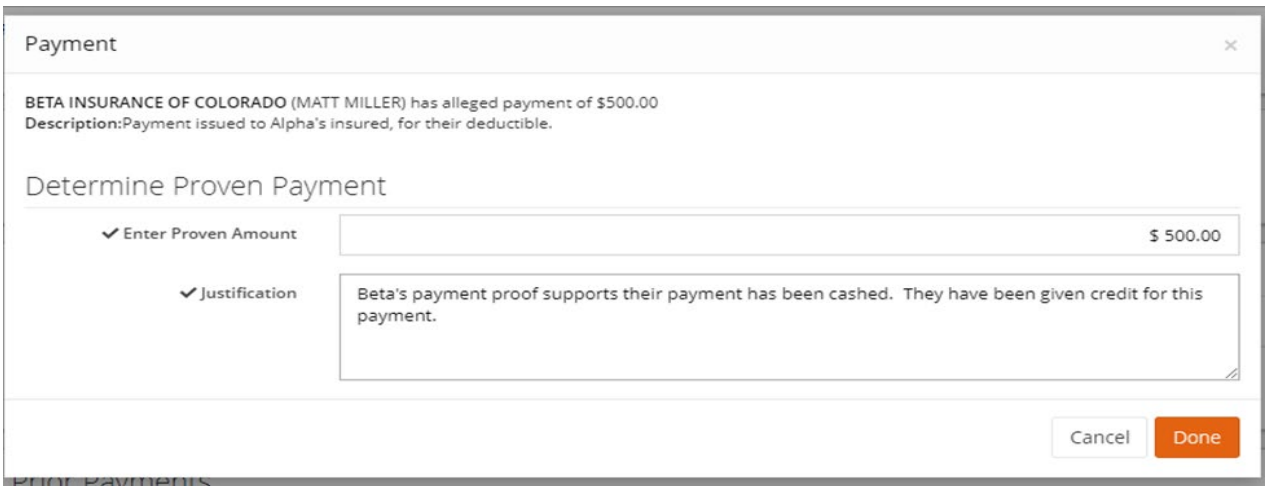
### Scenario 1

The recovering company files for its full claim amount, and the responding company enters an alleged payment amount into the prior payment section.

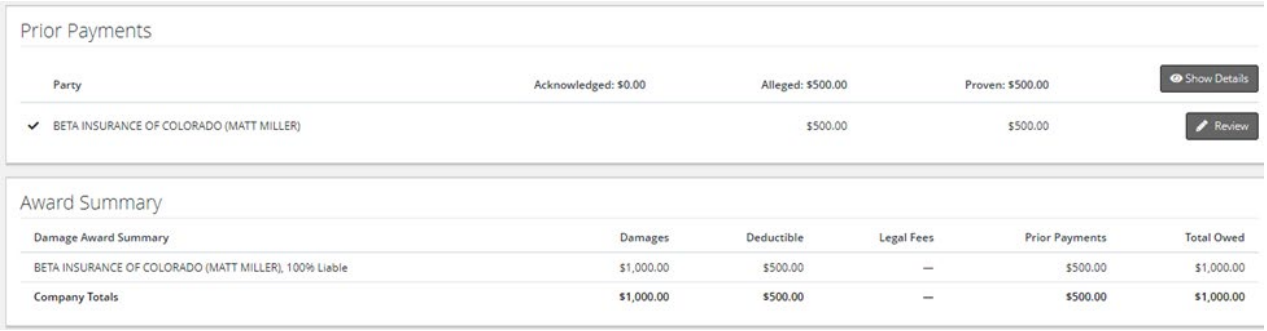
1. Here, the recovering company files for $1,000 in auto damages, plus their $500.00 deductible. The responding company asserts it has paid $500.00 to the recovering company. You have determined liability at 100% and award "all damages." This generates an award of $1,500.00 (auto damages, plus deductible).



You will now review the responding company's evidence and determine if it supports that the payment has **cleared** or an EFT was sent. (Some company's proof of payment status shows *paid* or *cashed* to indicate the payment has cleared, i.e., been received and accepted.) If the evidence supports the payment has cleared or the EFT was sent, you will enter the payment credit. Credit is not to be given if the status is *Issued*. To enter the credit, click on the review button under the Prior Payment section to enter the payment credit of $500.00, as shown in the following illustration:




Once you have confirmed the prior payment and applied the credit, click the "Done" button. This will take you back to the Damage Recovery screen, which will show that the credit for the prior payment has been applied. As shown in the following illustration, the proven damages, less the payment, have been awarded in the amount of $1,000.00.



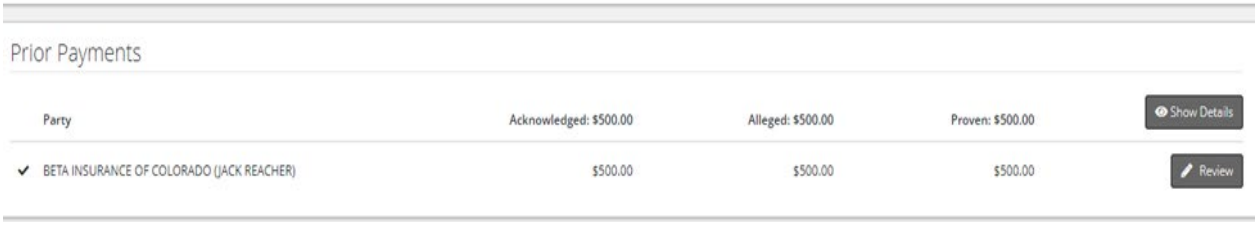

2. If the responding company's evidence does not support that its payment has cleared or an EFT was sent, you would enter $0.00 under the Proven Amount in the Prior Payment section. Under the Justification section, you will explain that the responding company's payment evidence does not support that its payment has cleared. The member companies will be free to resolve any issue if the payment is received and cashed after the response is submitted.

3. The responding company's proof of payment indicates a total cashed amount of $750.00; however, they have only alleged prior payments totaling $500.00. In this case, you should enter a payment credit of $500.00 and explain that although the documentation supports a higher amount, TRS limits the credit to the amount specifically alleged by the responding company.

## Scenario 2

The recovering company files for its full claim amount (same as Scenario 1). For this filing, the recovering company acknowledges it has received the responding company's payment in the prior payment section.

1. The responding company also alleges the same payment amount in the payment section. Since both parties have entered the same amount, TRS does not require anything further from the arbitrator.




When clicking the "Review" button, which is not required since the acknowledged and alleged amounts are the same, you will see that TRS prefills the Proven Amount and the Justification section:


2. The responding company alleges a payment amount greater than the amount that has been acknowledged by the recovering company. Here, you will want to review the responding company's payment evidence and confirm if the documentation supports that the payments have cleared. If payment clearance is supported, you will enter the alleged amount under the Proven Amount section. If the payment documentation does not support that the additional payments have cleared, you will enter the amount acknowledged as received into the Proven Amount section.

## Scenario 3

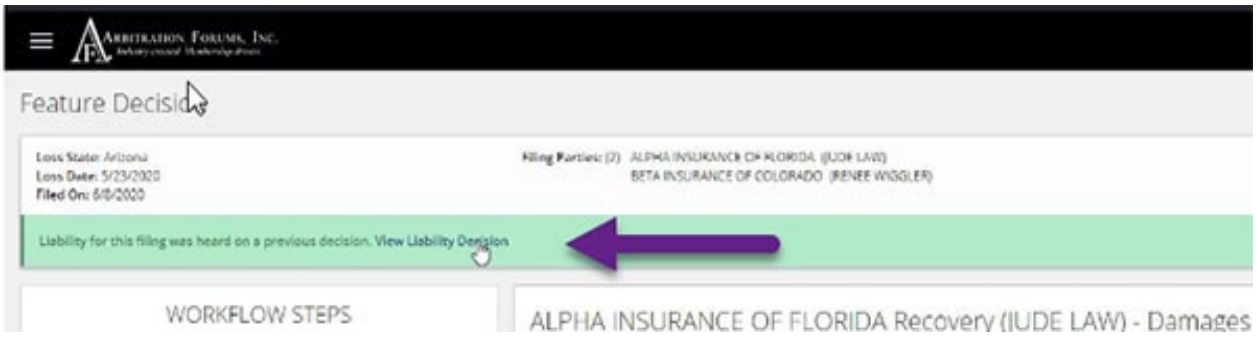
For this filing, the recovering company is again only seeking recovery of its auto damages totaling $1,000.00 and its $500.00 deductible. It has not acknowledged receiving a payment from the responding company.

1. In addition to its payment issued to the recovering company, the responding company has included a payment issued to the rental vendor. The payment was for the reimbursement of the recovering company's insured's rental. While the payment shows it has cleared, the recovering company is not seeking recovery for its insured's rental. Since rental damages are not being sought, you would not apply the credit for the rental payment. In the Justification section, you would explain credit cannot be given for the rental payment, since the Recovering company is not seeking these damages.

## Scenario 4

In this example, the recovering company is seeking supplemental damages. The responding company alleged a payment for damages paid toward the damages awarded in the prior arbitration. Your first clue that there might be an issue is that the alleged payment amount exceeds the damages sought in the supplemental filing.

1. Here, the recovering company was initially awarded $2,300.00 in damages. They are now seeking $800.00 in supplemental damages. The responding company enters a prior payment of $2,300.00. The fact the recovering company is only seeking $800.00 in this filing should make you question if the prior payment totaling $2,300.00 applies to the damages sought in this filing.
2. The prior decision should be viewed to determine if the award amount equals the amount of the prior payment entered on the supplemental filing. If it does, do not apply credit.




## Double-Dip Payments

The Prior Payment section is the only area within the decision where double-dip payments can be credited. When arguing double-dip payments, the responding company is strongly encouraged to present their argument in the damages section. This ensures the recovering company has the

opportunity to rebut the double-dip allegation. For example, the recovering company is seeking auto damages totaling $1,000.00, plus its insured's $500.00 deductible. The responding company submits as evidence its payment for $800.00, which was issued to the recovering company's body shop or insured. In addition to supporting that the payment has cleared, you will need to determine if the responding company has supported the payment that was issued for damages sought within the filing. If the responding company has met both requirements, you will then need to decide if the responding company should be given credit for its payment in relation to its double-dip argument.

> *Note: When determining whether to apply a credit for prior payments, the arbitrator must confirm that the responding company has properly alleged the prior payment by completing the "Prior Payment" section. Without this entry, arbitrators cannot reduce or remove the feature damage amount to account for any prior payments.*

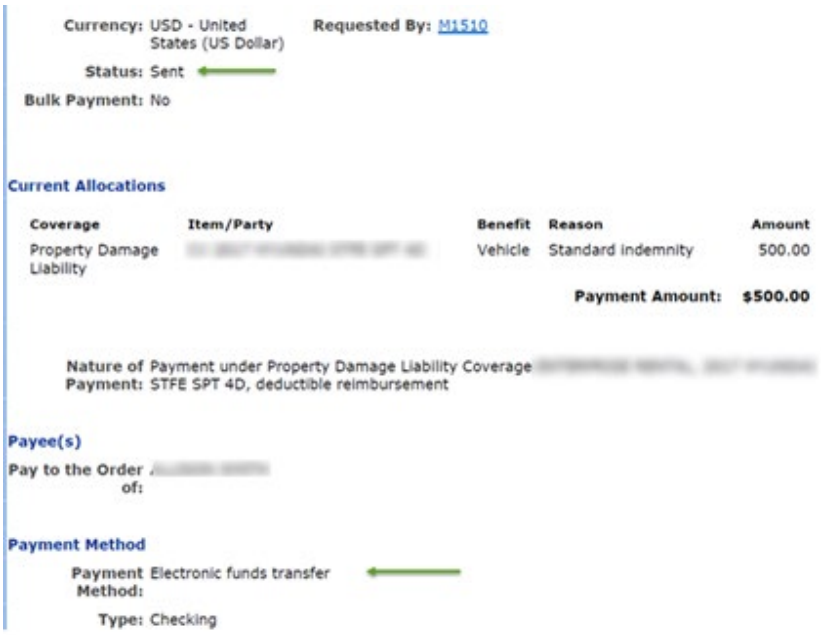
A responding company may state that it has paid the recovering company's insured directly for the deductible. If the responding company's insured has received and processed proof of payment for the deductible, a prior payment credit may be applied for the deductible. Crediting the deductible is done in the prior payment section only. A responding company would need to populate the prior payment section to receive the credit. An arbitrator would not remove or zero out the deductible from the requested deductible itemization section.

## Ethical Obligations: Final Prior Payment Considerations

Remember, even when the responding company has provided evidence that its payment has been cashed, you can only enter the payment credit if the responding company has entered the alleged amount properly in the Prior Payment section. You cannot modify the award or reduce damages to apply credit.

### Examples of Proof of Payments

- A print screen of EFT with a status of *Sent*:



**Currency:** USD - United States (US Dollar) **Requested By:** M1510

**Status:** Sent

**Bulk Payment:** No

**Current Allocations**

| Coverage | Item/Party | Benefit | Reason | Amount |
|---|---|---|---|---|
| Property Damage Liability | [redacted] | Vehicle | Standard indemnity | 500.00 |
| | | | **Payment Amount:** | **$500.00** |

**Nature of Payment:** Payment under Property Damage Liability Coverage [redacted] STFE SPT 4D, deductible reimbursement

**Payee(s)**

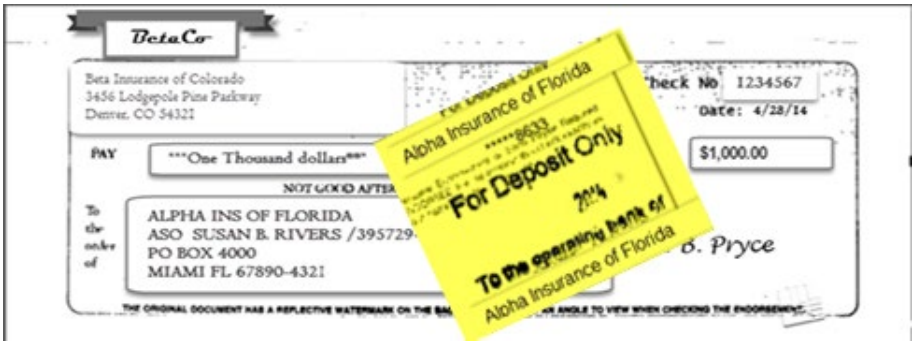
**Pay to the Order of:** [redacted]

**Payment Method**

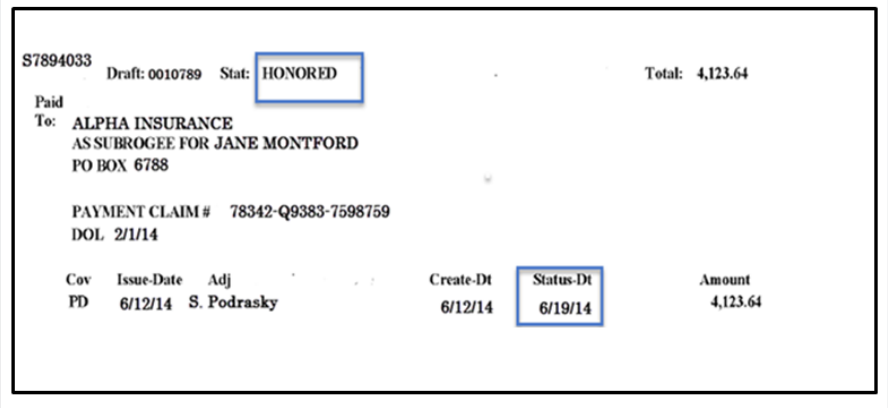
**Payment Method:** Electronic funds transfer

**Type:** Checking

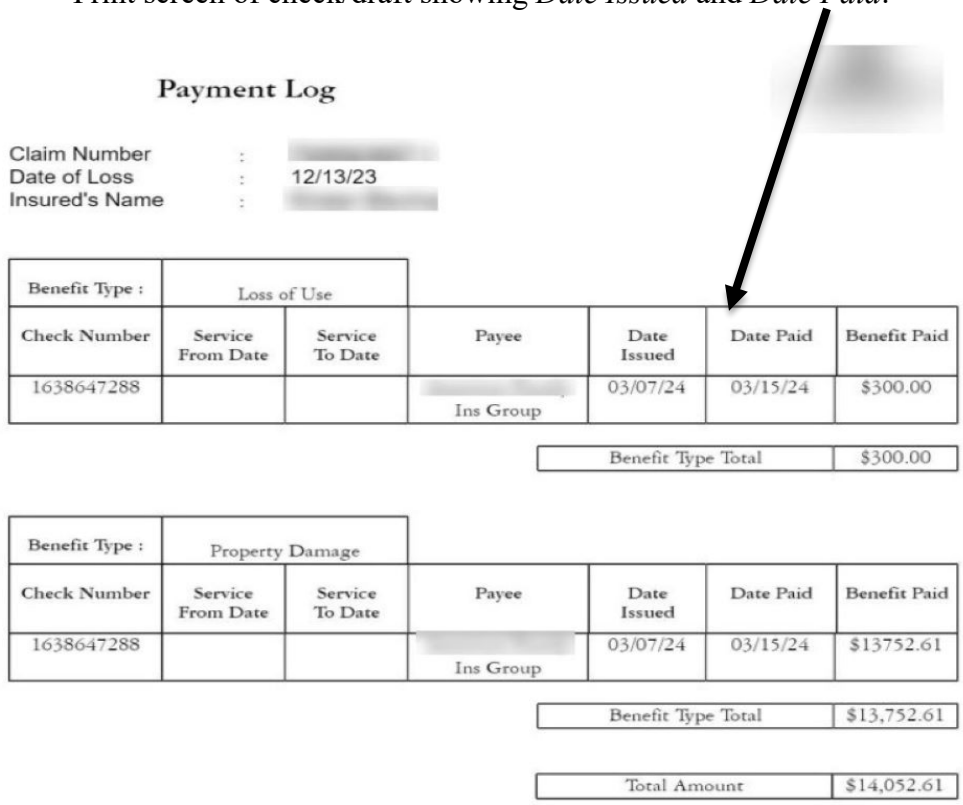
- An actual check/draft with a status of *Deposited/Cashed*:




- Print screen of check/draft with a status of *Honored/Cashed*:



- Print screen of check/draft showing *Date Issued* and *Date Paid*:



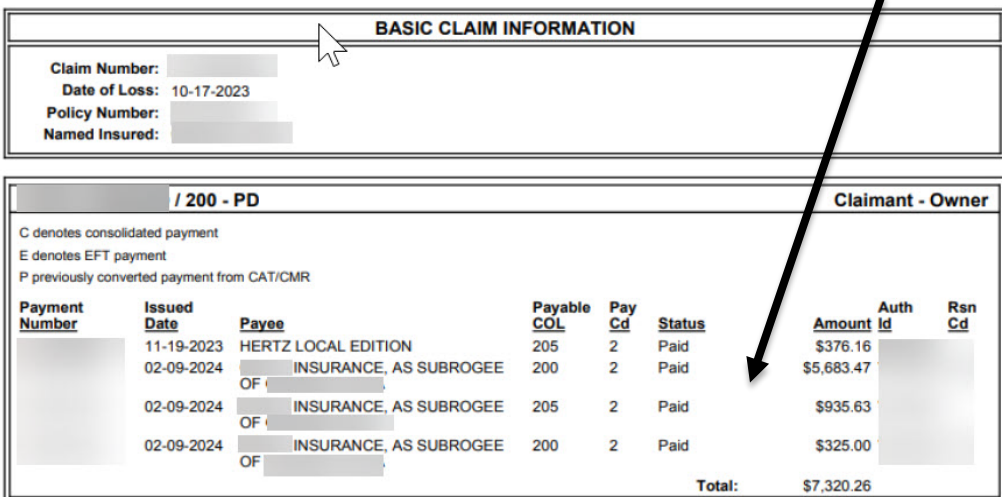
**Payment Log**

Claim Number : [redacted]
Date of Loss : 12/13/23
Insured's Name : [redacted]

| Benefit Type : | Loss of Use | | | | | |
|---|---|---|---|---|---|---|
| Check Number | Service From Date | Service To Date | Payee | Date Issued | Date Paid | Benefit Paid |
| 1638647288 | | | [redacted] Ins Group | 03/07/24 | 03/15/24 | $300.00 |
| | | | | Benefit Type Total | | $300.00 |

| Benefit Type : | Property Damage | | | | | |
|---|---|---|---|---|---|---|
| Check Number | Service From Date | Service To Date | Payee | Date Issued | Date Paid | Benefit Paid |
| 1638647288 | | | [redacted] Ins Group | 03/07/24 | 03/15/24 | $13752.61 |
| | | | | Benefit Type Total | | $13,752.61 |
| | | | | Total Amount | | $14,052.61 |

- Print screen of check/draft showing issue date and a status of *Paid*:



**BASIC CLAIM INFORMATION**

Claim Number: [redacted]
Date of Loss: 10-17-2023
Policy Number: [redacted]
Named Insured: [redacted]

[redacted] / 200 - PD — Claimant - Owner

C denotes consolidated payment
E denotes EFT payment
P previously converted payment from CAT/CMR

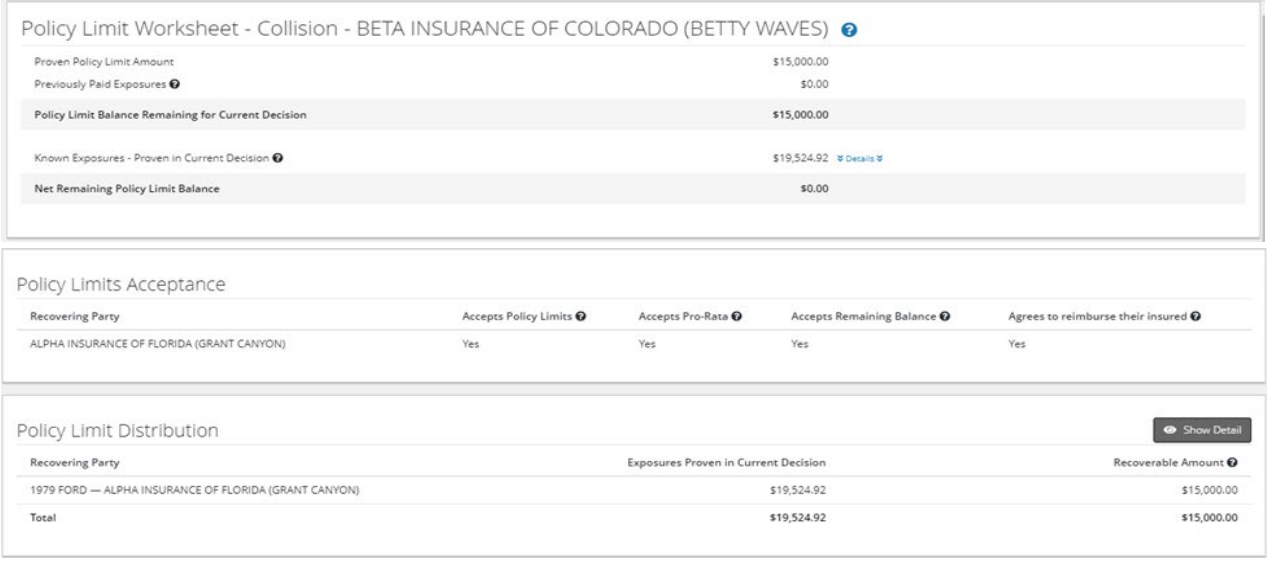
| Payment Number | Issued Date | Payee | Payable COL | Pay Cd | Status | Amount | Auth Id | Rsn Cd |
|---|---|---|---|---|---|---|---|---|
| [redacted] | 11-19-2023 | HERTZ LOCAL EDITION | 205 | 2 | Paid | $376.16 | [redacted] | |
| | 02-09-2024 | [redacted] INSURANCE, AS SUBROGEE OF [redacted] | 200 | 2 | Paid | $5,683.47 | | |
| | 02-09-2024 | [redacted] INSURANCE, AS SUBROGEE OF [redacted] | 205 | 2 | Paid | $935.63 | | |
| | 02-09-2024 | [redacted] INSURANCE, AS SUBROGEE OF [redacted] | 200 | 2 | Paid | $325.00 | | |
| | | | | | Total: | $7,320.26 | | |

## Policy Limits Worksheet

After you rule on liability, damages, and any prior payments, you may be presented with a Policy Limits Worksheet if policy limits have been raised.

The following two examples cover different policy limit scenarios. The first is an example of when policy limits have been accepted and the proven damages are above the policy limit amount.

## Example 1



Policy Limit Worksheet - Collision - BETA INSURANCE OF COLORADO (BETTY WAVES)

| | |
|---|---|
| Proven Policy Limit Amount | $15,000.00 |
| Previously Paid Exposures | $0.00 |
| **Policy Limit Balance Remaining for Current Decision** | **$15,000.00** |
| Known Exposures - Proven in Current Decision | $19,524.92 Details |
| **Net Remaining Policy Limit Balance** | **$0.00** |

Policy Limits Acceptance

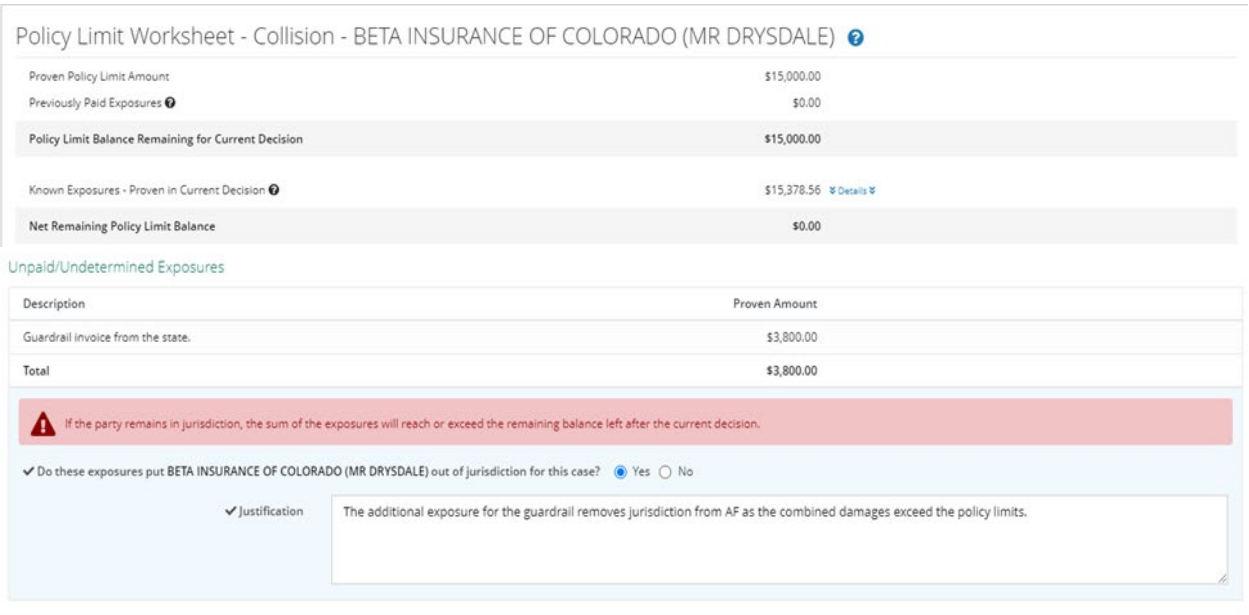
| Recovering Party | Accepts Policy Limits | Accepts Pro-Rata | Accepts Remaining Balance | Agrees to reimburse their insured |
|---|---|---|---|---|
| ALPHA INSURANCE OF FLORIDA (GRANT CANYON) | Yes | Yes | Yes | Yes |

Policy Limit Distribution — Show Detail

| Recovering Party | Exposures Proven in Current Decision | Recoverable Amount |
|---|---|---|
| 1979 FORD — ALPHA INSURANCE OF FLORIDA (GRANT CANYON) | $19,524.92 | $15,000.00 |
| **Total** | **$19,524.92** | **$15,000.00** |

The second example is when policy limits have been exceeded and there is an additional exposure.

## Example 2



Policy Limit Worksheet - Collision - BETA INSURANCE OF COLORADO (MR DRYSDALE)

| | |
|---|---|
| Proven Policy Limit Amount | $15,000.00 |
| Previously Paid Exposures | $0.00 |
| **Policy Limit Balance Remaining for Current Decision** | **$15,000.00** |
| Known Exposures - Proven in Current Decision | $15,378.56 Details |
| **Net Remaining Policy Limit Balance** | **$0.00** |

Unpaid/Undetermined Exposures

| Description | Proven Amount |
|---|---|
| Guardrail invoice from the state. | $3,800.00 |
| **Total** | **$3,800.00** |

If the party remains in jurisdiction, the sum of the exposures will reach or exceed the remaining balance left after the current decision.

✔ Do these exposures put **BETA INSURANCE OF COLORADO (MR DRYSDALE)** out of jurisdiction for this case? (•) Yes ( ) No

✔ Justification: The additional exposure for the guardrail removes jurisdiction from AF as the combined damages exceed the policy limits.

In the previous example, the additional exposure (Florida Department of Transportation) is not a member of arbitration. Therefore, AF does not have jurisdiction to award damages from the Beta

policy limits. The case would be placed out of jurisdiction even if the Recovering company has agreed to a pro-rata or remaining limits amount in this example.

If the second example's additional exposure was for an insured's out-of-pocket expenses, the filing may or may not remain in jurisdiction. When the Recovering company has agreed to indemnify its insured for supported out-of-pocket expenses, the filing would remain in jurisdiction. The filing would be out of jurisdiction when the Recovering company has not agreed to indemnify its insured's supported out-of-pocket expenses.

## Award Summary/Review & Submit

After you have spent your time on the "hard part" (making the call on liability and/or damages and writing the decision), it is time for the "easy part"—confirming that the award amount is correct. As you review the award, check the following:

- Are the parties listed correctly? Do not mix up or switch the parties. Use the company names rather than "recovering company" and "responding company."
- Did you verify what the total company-paid damages include? If the total company-paid damages amount is only a percentage of the full damages because the member is only seeking a percentage, you may have to use the award modification functionality to award the correct amount with an explanation.
- Check the award to make sure it is correct based on your liability and damages decision.

We hope this guide will help you contribute to the maintenance of high standards and continued confidence in the arbitration process. Again, thank you, and welcome.