ARBITRATION FORUMS, INC.

Membership driven. Innovation focused.

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

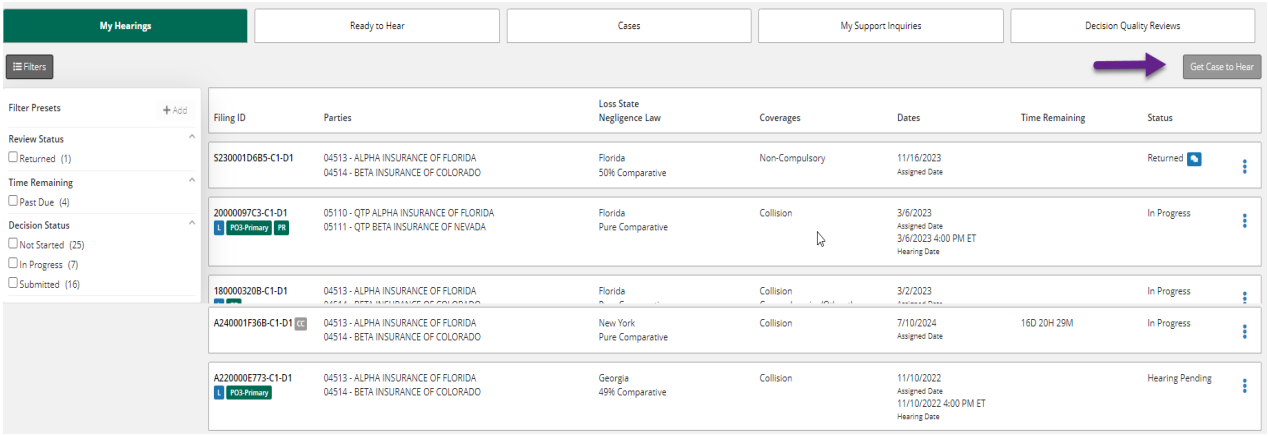
AF's overall goal is to ensure member satisfaction regarding decision quality and to help identify any arbitrator training opportunities.

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 Parties 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

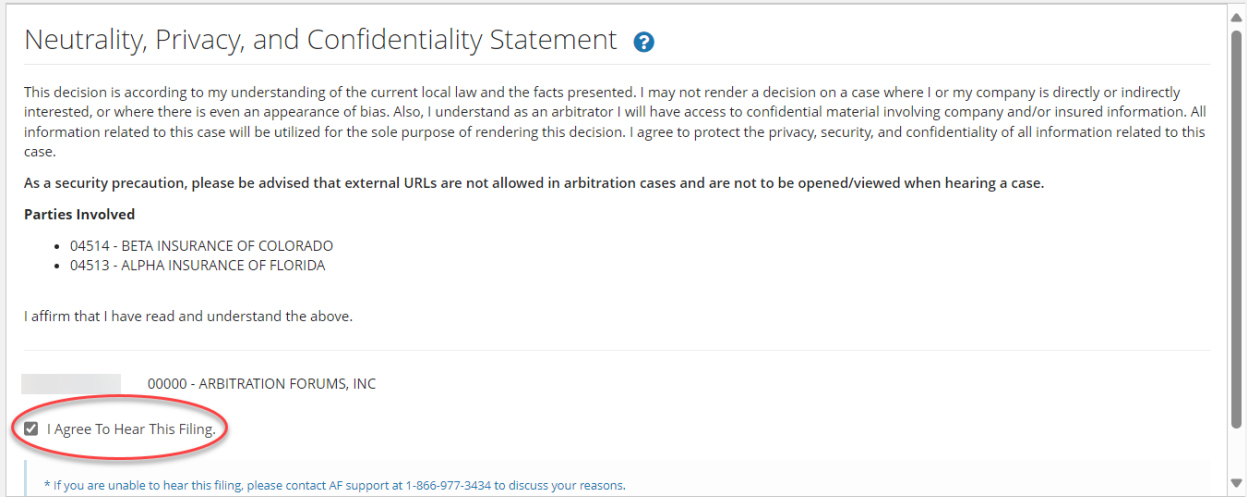
When you access TRS, the following view will display. The **My Hearings** worklist is where you will "Get Case to Hear" or access an in-progress decision to complete it.



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

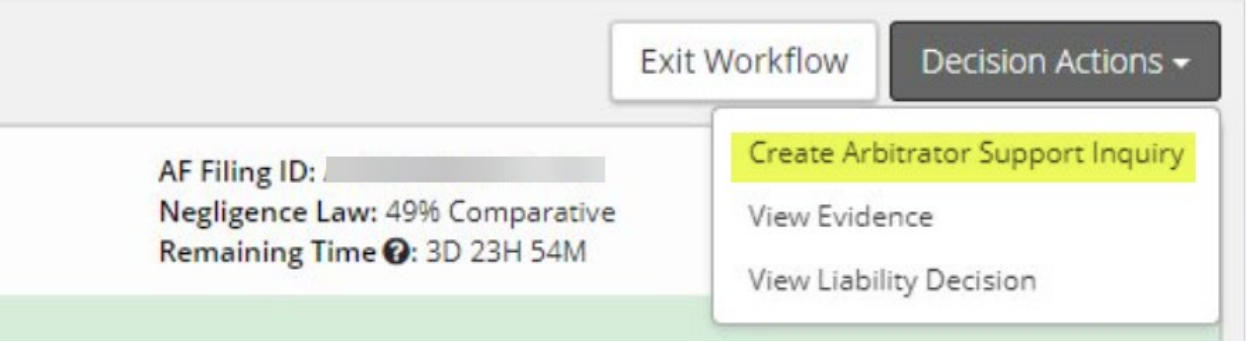
When you first enter a filing, you will be met with the Neutrality, Confidentiality, and Privacy Statement and need to agree to move forward with the hearing.



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 Party having filed simply to toll the statute of limitations with the understanding that an underlying claim or suit must be resolved first; the Responding Party 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 Party, while exclusions are asserted by the Responding Party.

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 Party 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 Party to recover 100% of its damages. This is regardless of the amount of negligence proven against the named Responding Party.

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

- **Bailment**: Did the Recovering Party submit evidence to support bailment applied to the loss and how it affects its recovery?
- **Joint and Several**: Did the Recovering Party 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 Party proven the Responding Party either disposed of critical evidence or did not make it available for the Recovering Party to inspect/test? Did the Recovering Party prove that the piece of evidence would have been crucial to proving its case against the Responding Party?

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 Party'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 Party 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 Party has filed its claim after the statute of limitations expired, but the Responding Party has not asserted the exclusion, it is waived. You may not raise it for the Responding Party.

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 Party asserting it if there are multiple Responding Parties. 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 Party's evidence support that claims cannot be pursued against federal vehicles? Did the Recovering Party offer a rebuttal and evidence to disprove the exclusion?
- **Filed Under the Wrong Coverage**: Do the damages sought by the Recovering Party fall under the coverage that the filing was submitted under? (e.g., auto damages sought under PIP)
- **Incorrect Right of Recovery**: Did the Recovering Party select the correct right of recovery? (e.g., recovery is based on the Responding Party's negligence, but Concurrent Coverage (CC) was selected as the right of recovery)?
- **Lack of Notice/Municipality Immunity**: Does the Responding Party's evidence support that a statutory lack of notice bars recovery or municipality immunity applies? Did the Recovering Party offer a rebuttal and evidence to disprove the exclusion?
- **Liability Deductible/Self-Insured Retention**: Does the Responding Party'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 Party's evidence support that the Responding party does not write insurance in the loss state? This is typically asserted where arbitration is statutorily mandated in the loss state, but the Responding Party does not write in the state. Therefore, mandatory arbitration does not apply to it.
- **Release and Hold Harmless**: Does the Responding Party's evidence support that the claim has been paid and released?
- **Retro-rated Policy**: Does the Responding Party'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 Party'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 Party'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 Party 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 Party submit evidence of written consent from the Responding Party agreeing to arbitrate the claim?
- **Watercraft Claim Arising from Accidents on Waters Under Federal or International Jurisdiction (Property Arbitration)**: Did the Recovering Party submit evidence proving that the waters upon which the accident occurred were not under federal or international jurisdiction? Did the Responding Party provide proof that the waters were under federal or international jurisdiction?

**If the Recovering Party files for the wrong coverage or right of recovery, and the Responder(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 Party's vehicle, the Responding Party's denial of coverage letter should be sent to the named insured, driver, or both since both are seeking liability coverage from the Responding Party'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 Party'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 Party 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 Party 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.

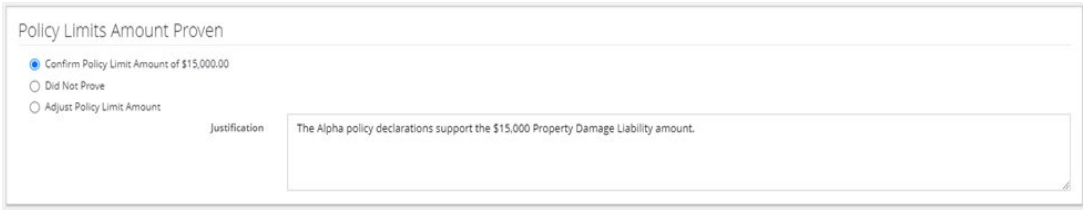
Policy Limits

When a Responding Party 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 Party's insured to pay any award amount over the Responding Party's policy limit.

A Recovering Party 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 Party waives any right to pursue the balance of the claim directly against the Responding Party's insured.

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

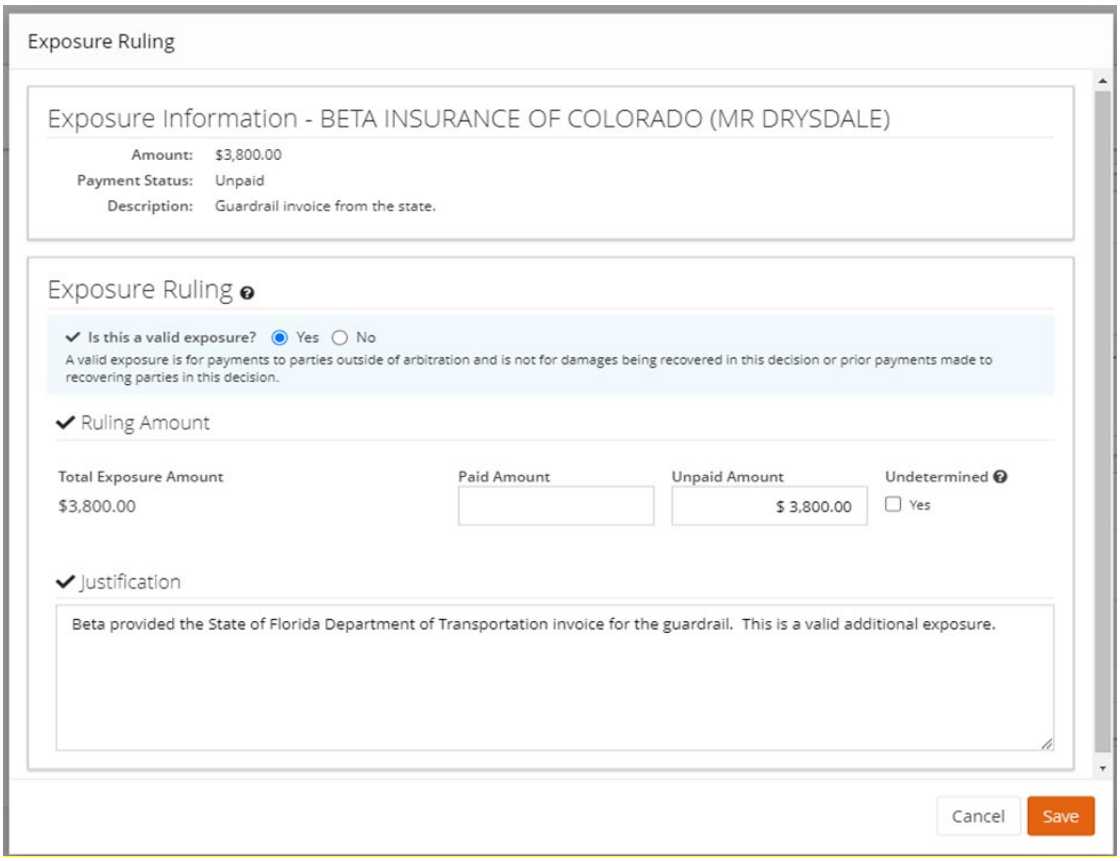
1. Review the submitted evidence and make the correct selection in the policy limit section. An example where the evidence confirmed the policy limit amount follows. The selection of "Did Not Prove" would be applicable if no policy evidence was supplied in the filing. There will be times when the "Adjust 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 Party'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 Responder.

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.

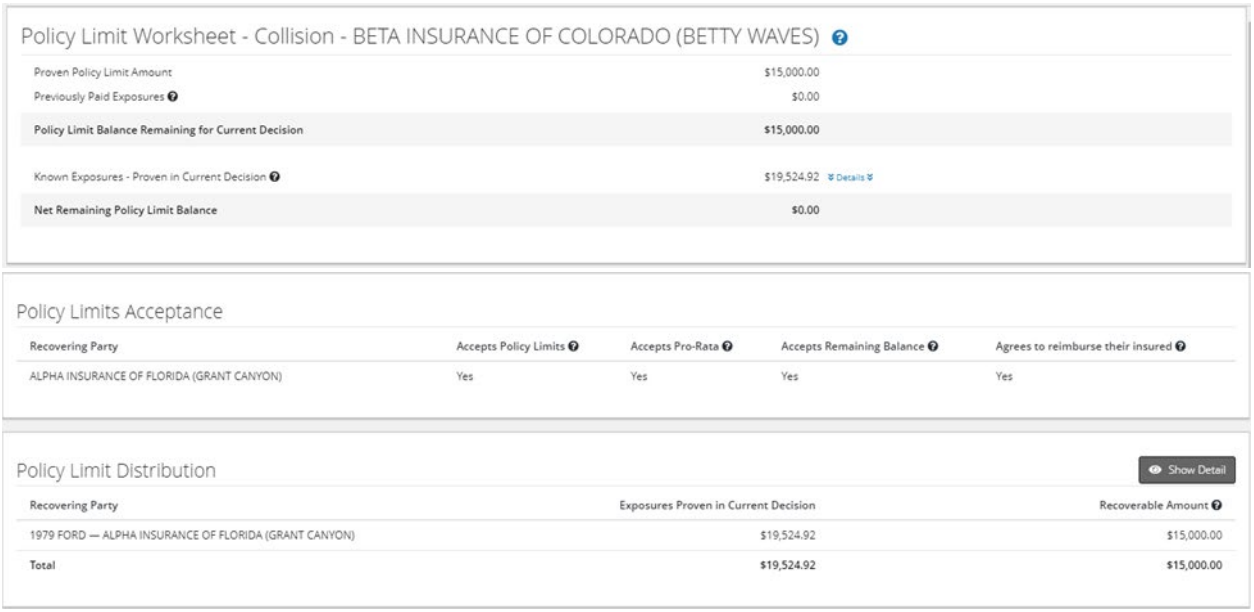


A Responding Party may cite potential **out-of-pocket** expenses on the part of the Recovering Party's insured as an additional exposure. Stating that the Recovering Party's insured may have out-of-pocket expenses is not enough information to be a valid exposure. There must be proof that out-of-pocket expenses exist for you to validate the exposure. A Recovering Party 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 Party 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**

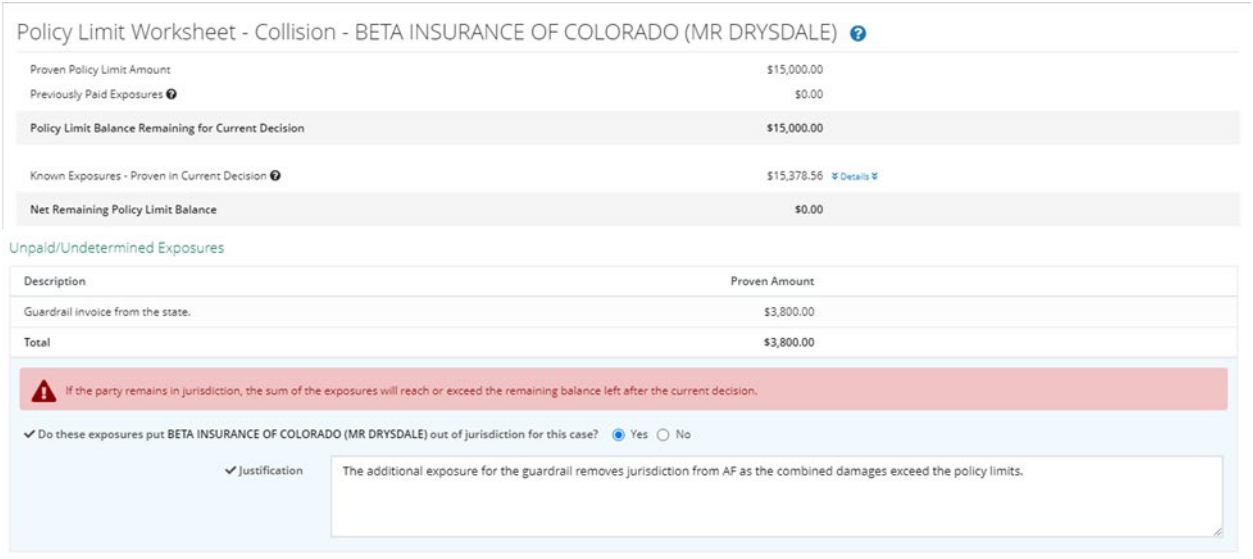
Policy Limits Acceptance

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.

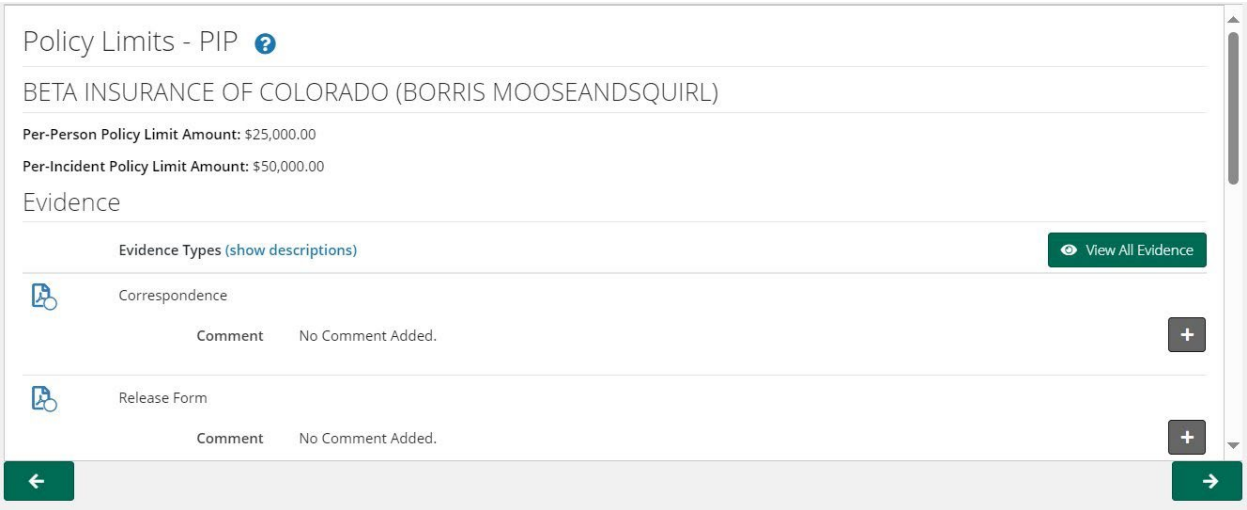
In the second example, the additional exposure (Florida Department of Transportation) is not a member of arbitration. Therefore, AF does not have jurisdiction to award damages from the Beta policy limits. The case would be placed out of jurisdiction even if the Recovering Party has agreed to a pro-rata 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 Party has agreed to indemnify its insured for supported out-of-pocket expenses, the filing would remain in

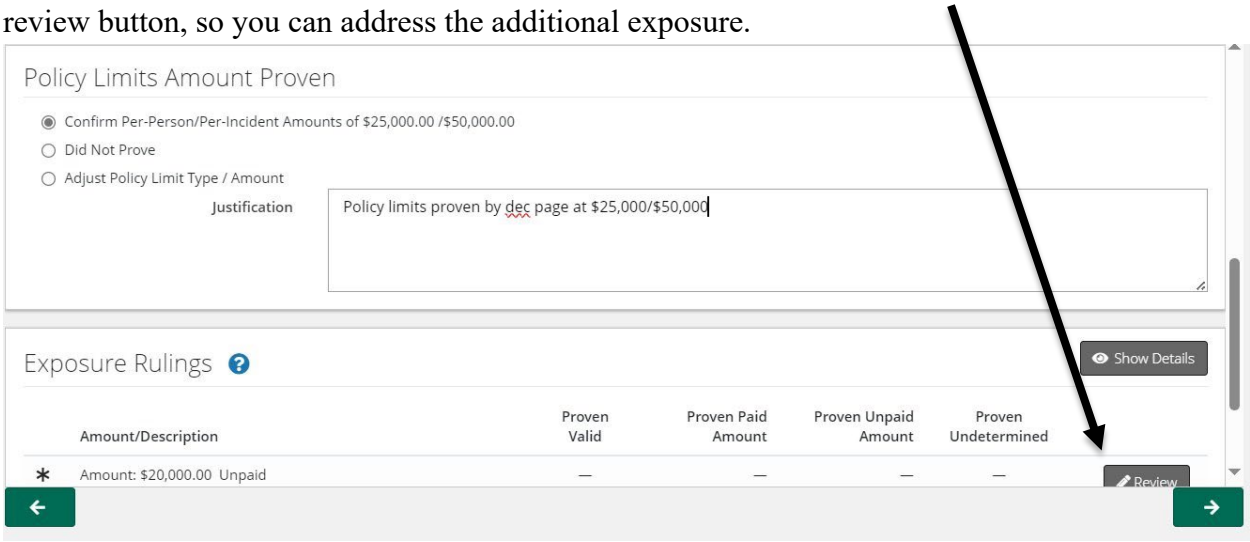
jurisdiction. The filing would be out of jurisdiction when the Recovering Party has not agreed to indemnify its insured's supported out-of-pocket expenses.

Example 3 (for PIP/Med Pay Filings)

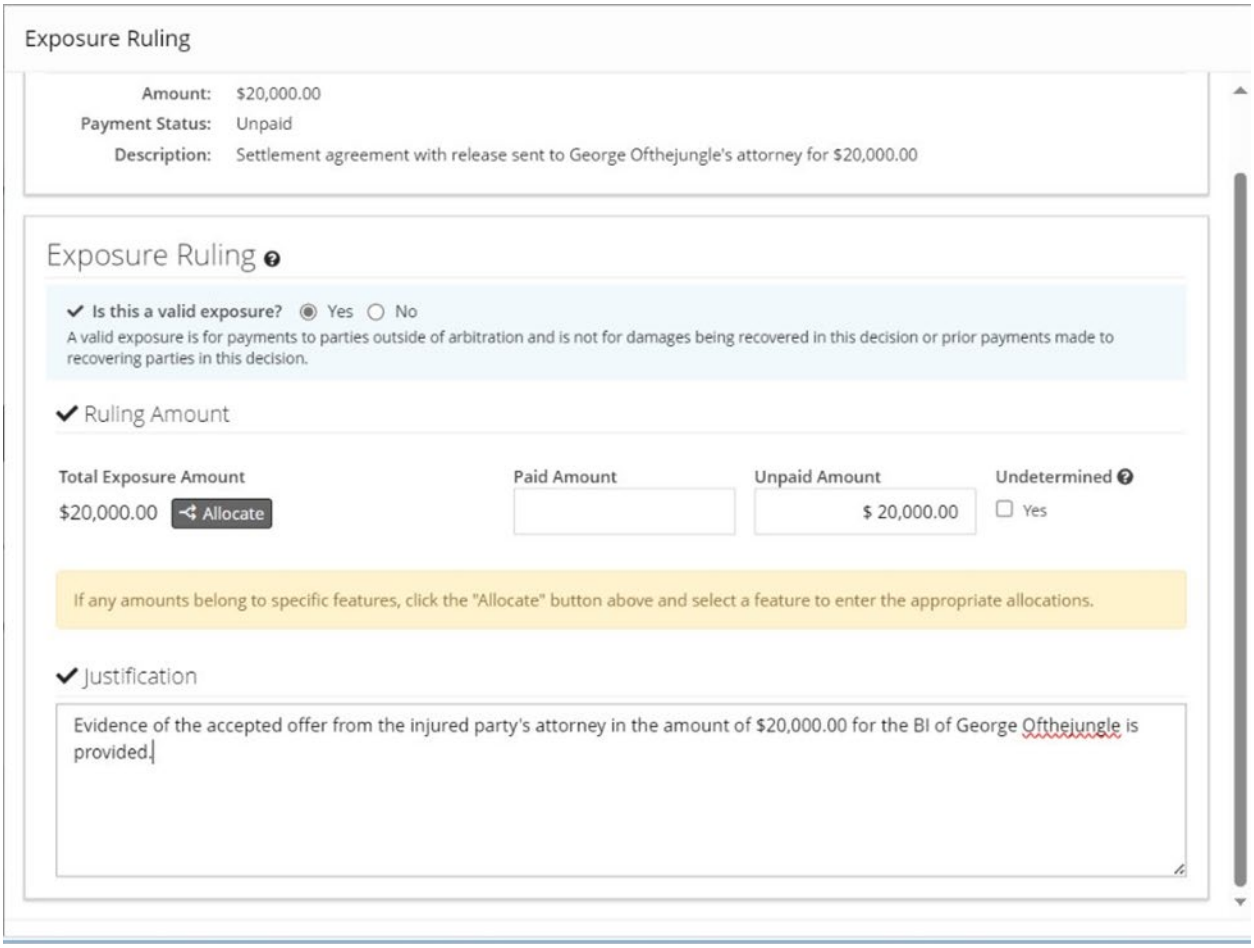
Here the Responding Party has a per-person/per-incident policy limit. For this filing, Beta has a $25,000.00 per-person policy limit with a $50,000.00 per incident limit. The following illustration shows the Policy Limit page in the decision workflow.



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.

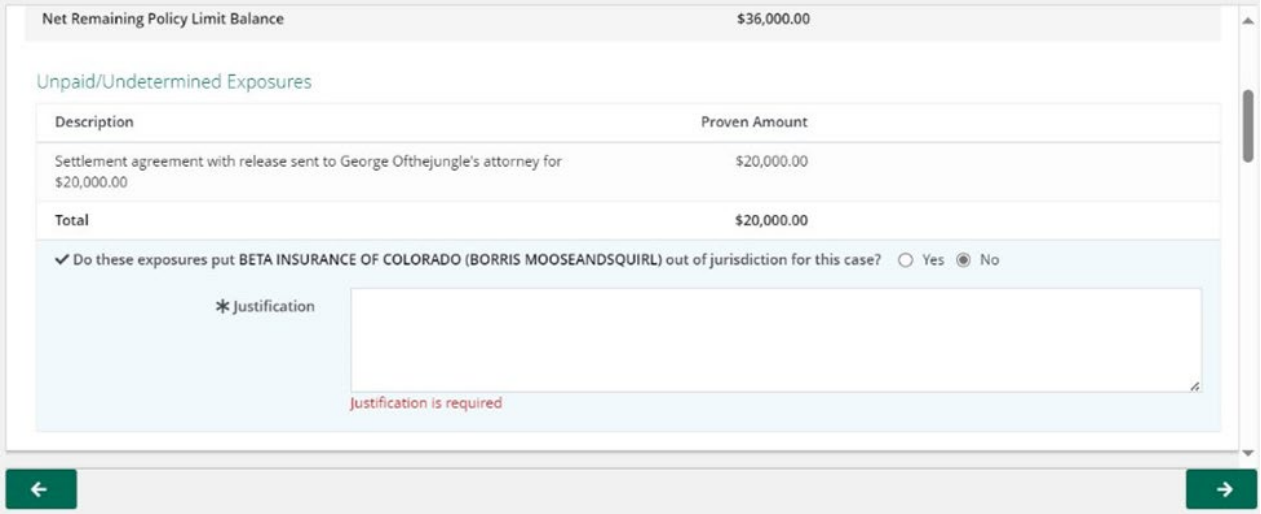


After clicking "Yes" to confirm this is a valid exposure, you get the **Allocate** button to allocate the policy limit. Once you have clicked on the Allocate button, it will display the feature for this filing.

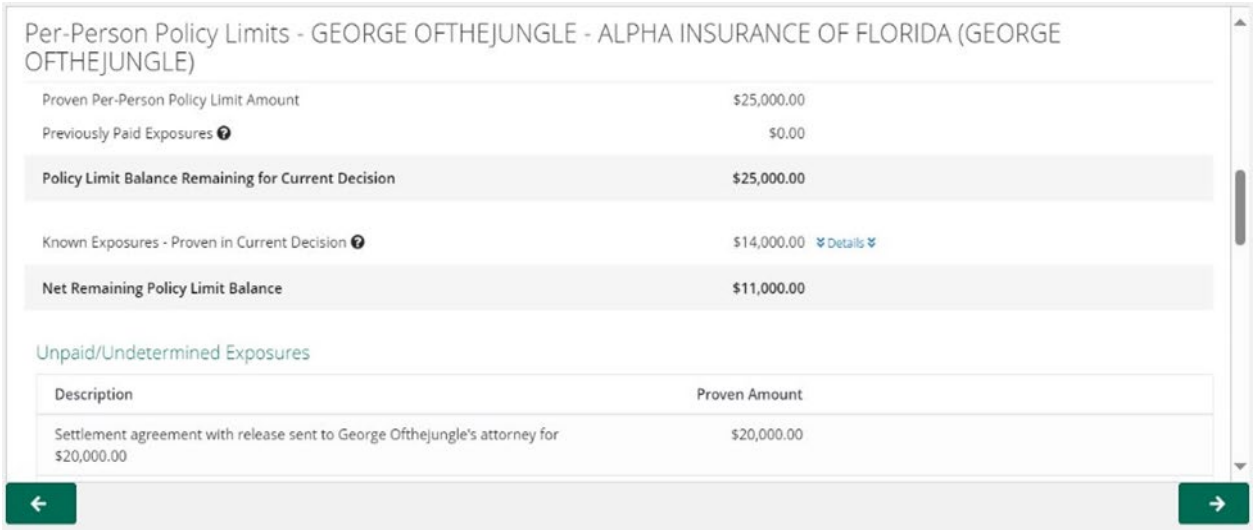
As seen above, you can allocate the unpaid additional exposure of $20,000.00.

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.

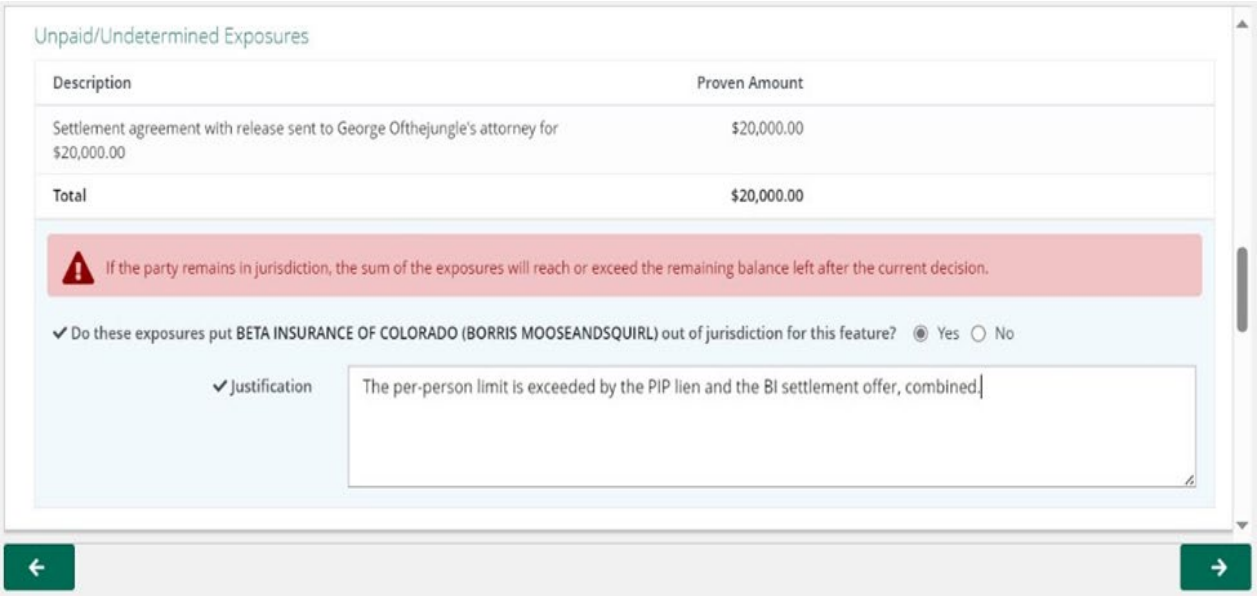
Scrolling down from there, you will be asked if the exposures put the per-incident limit out of jurisdiction, which for this example as follows, the answer would be no.



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.



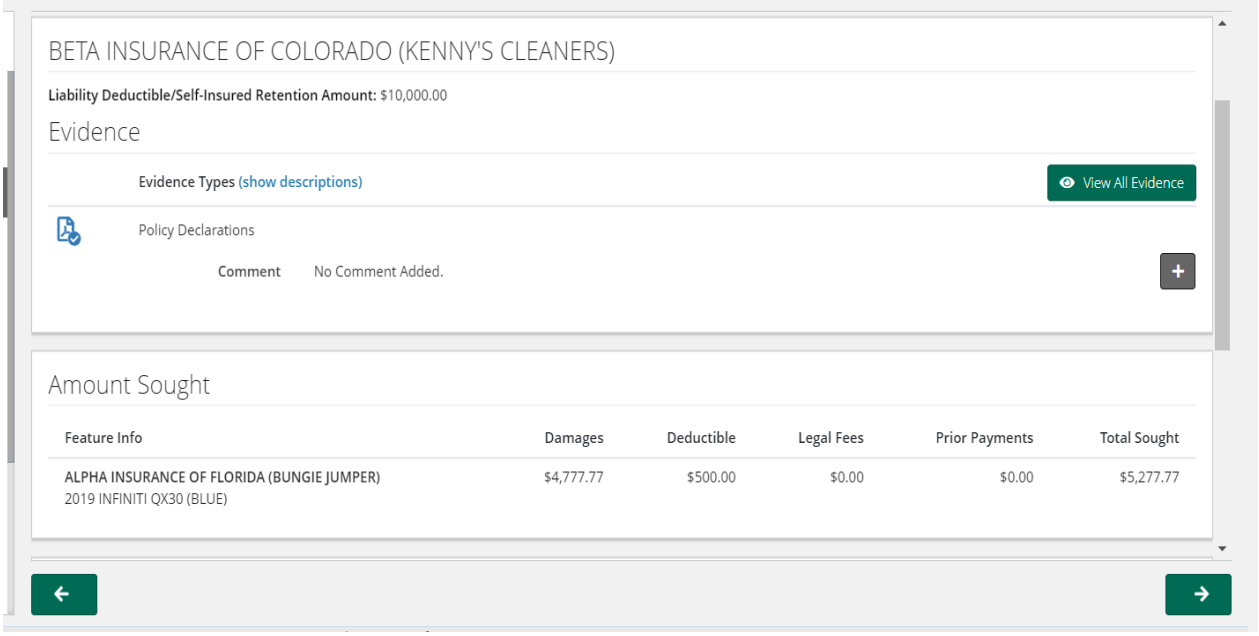
Once you move to the end of the page, you will be asked if the exposures put the policy limit out of jurisdiction. As you can see in the following illustration, the exposures along with the proven damages do put Beta out of jurisdiction for this feature.



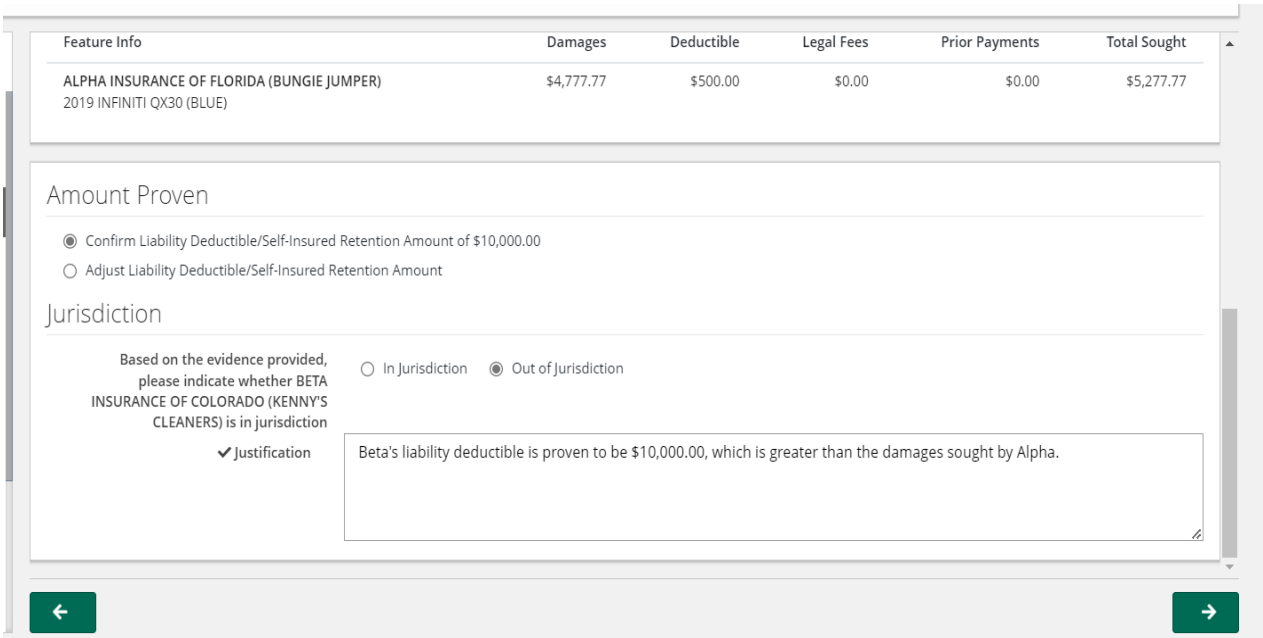
Liabilities Deductibles

Some cases involve Responding Parties with a liability deductible or self-insured retained limit (SIR). These are amounts that the Responding Party's insured is responsible for paying **before** their policy coverage becomes available. It is not unlike the Recovering Party'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 Party is seeking damages that are less than the Responding Party's liability deductible/SIR. In this instance, the Responding Party should assert a jurisdictional exclusion noting the amount of their liability deductible/SIR.

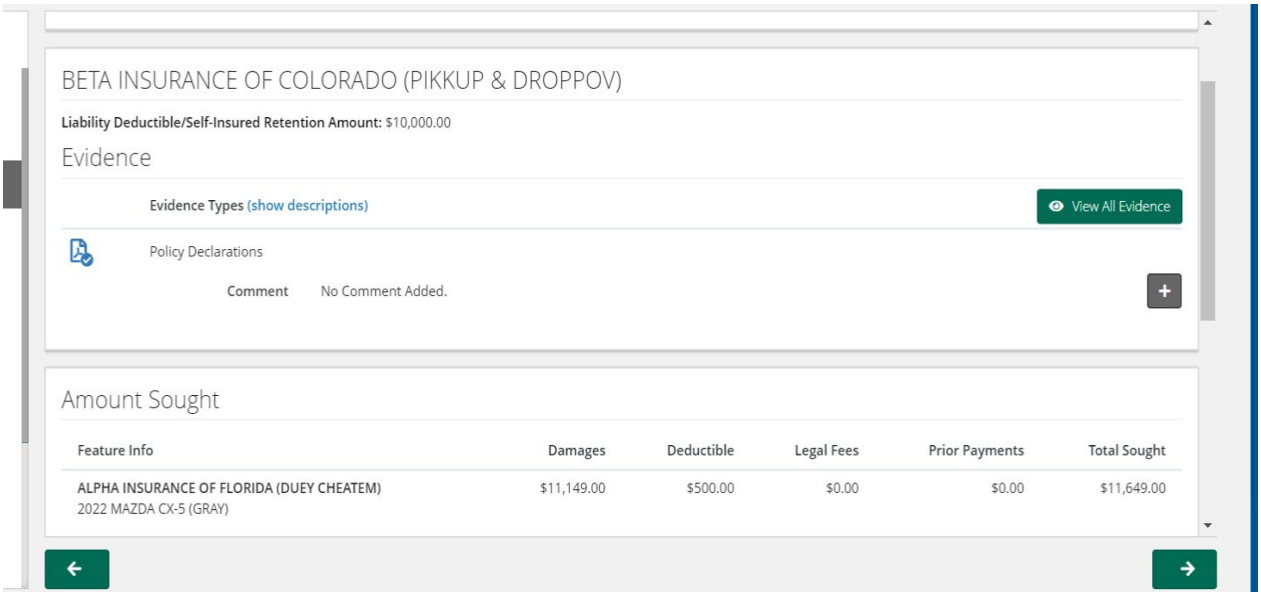


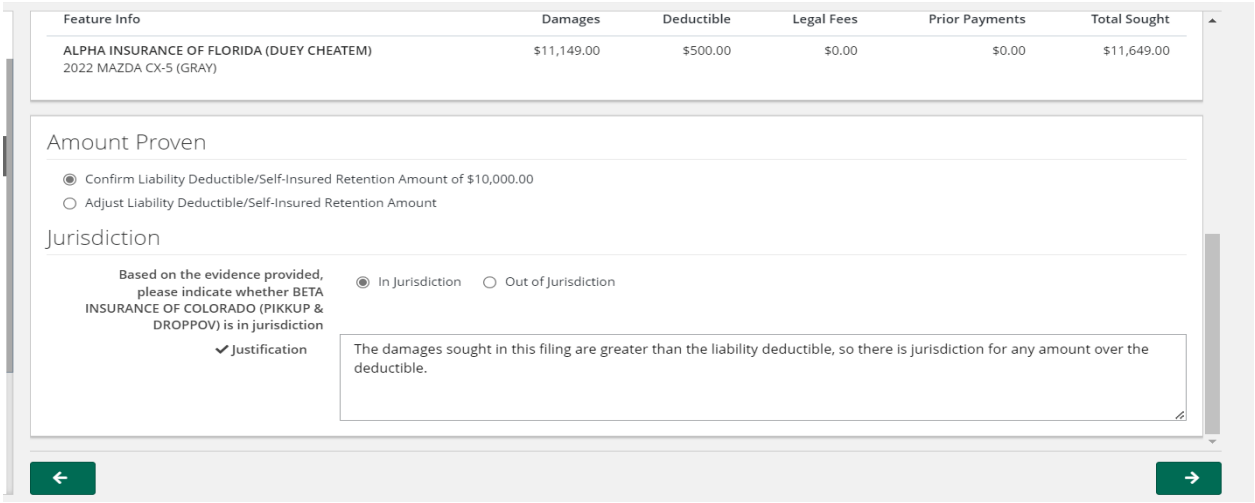
The Responding Party would include a copy of its declarations page or a screenshot of its coverages to prove the liability deductible, and the arbitrator should grant the jurisdictional exclusion.



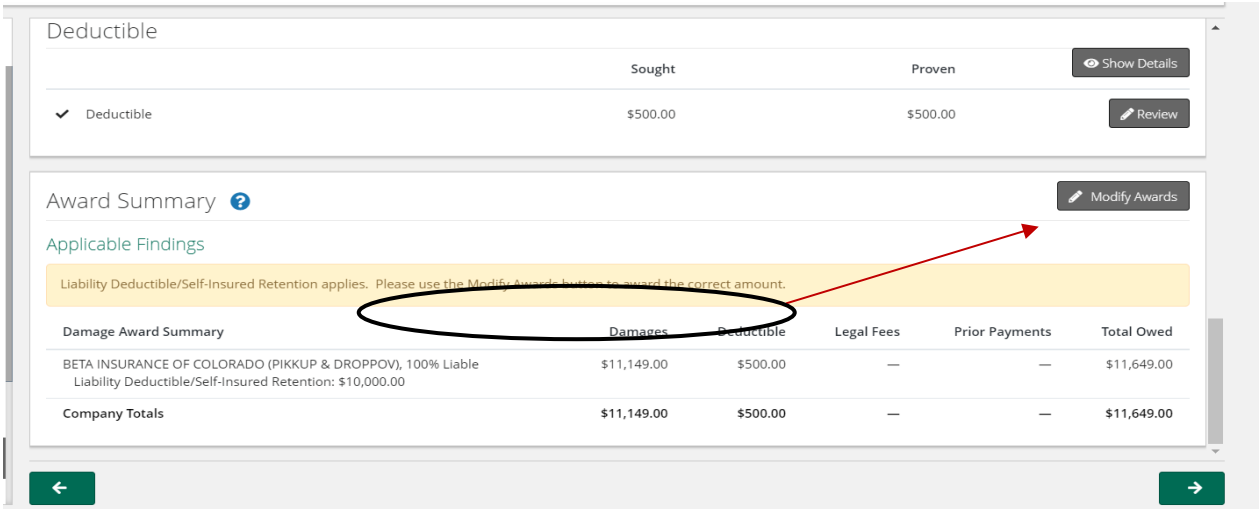
In other cases, the Responding Party has a liability deductible that is less than the Recovering Party's damages. If the Responding Party asserts a jurisdictional exclusion, the arbitrator should determine if the liability assessment and proven damages would result in an award over or under the liability 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.

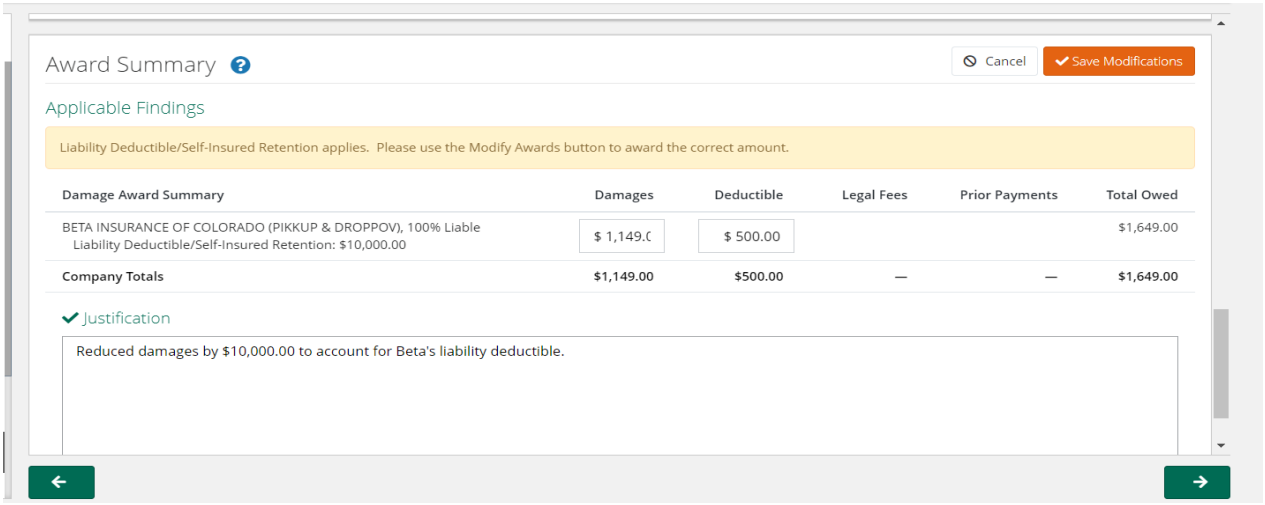




Once the liability decision is entered, the system will calculate the total award in excess of the liability deductible.



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 Party enter damage arguments in the liability or recovery arguments section, those arguments cannot be considered by the arbitrator (see Rule 3-5e). A Recovering Party's damage arguments must be entered in the Feature Damage section 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 Party's allegation of its insured's non-involvement and/or that liability was not proven by the Recovering Party must not be accepted unless the Responding Party supports it with some form of evidence.

Always remember: Arguments + Evidence = Fact

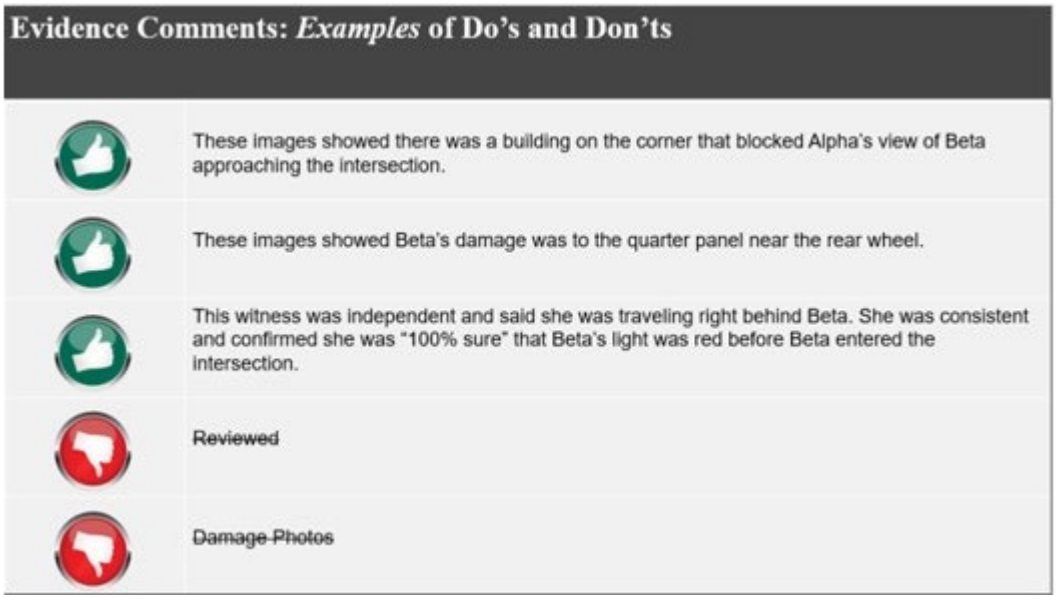
The standard used in intercompany arbitration is "preponderance of evidence," not "beyond a reasonable doubt." In addition, there are no default judgments in intercompany arbitration. The Recovering Party does not win simply because the Responding Party did not submit a response. The Recovering Party 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 Party(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 Party's liability arguments, in most cases. For example, in cases involving a single impact, if the Responding Party 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 Party may be admitting 100 percent liability for the Recovering Party's rear damages only, the arbitrator will have the discretion to rule on the disputed front damages.

If the Responding Party 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 Party admits partial liability, you cannot find it less responsible than the amount admitted. For example, if the Responding Party 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 Party 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 Parties 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 Party 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 Party must also prove that its damages were the direct result of the accident that took place between the Responding companies' insureds. If the Recovering Party 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 Party must prove that the others' insureds' negligence caused the accident and the Recovering Party'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 Party 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 Party should recover 100% of its damages, split equally between the Responding Parties. Should a Responding Party be out of jurisdiction (e.g., no liability policy or coverage denied), the remaining Responding Party(ies) will only owe its share.

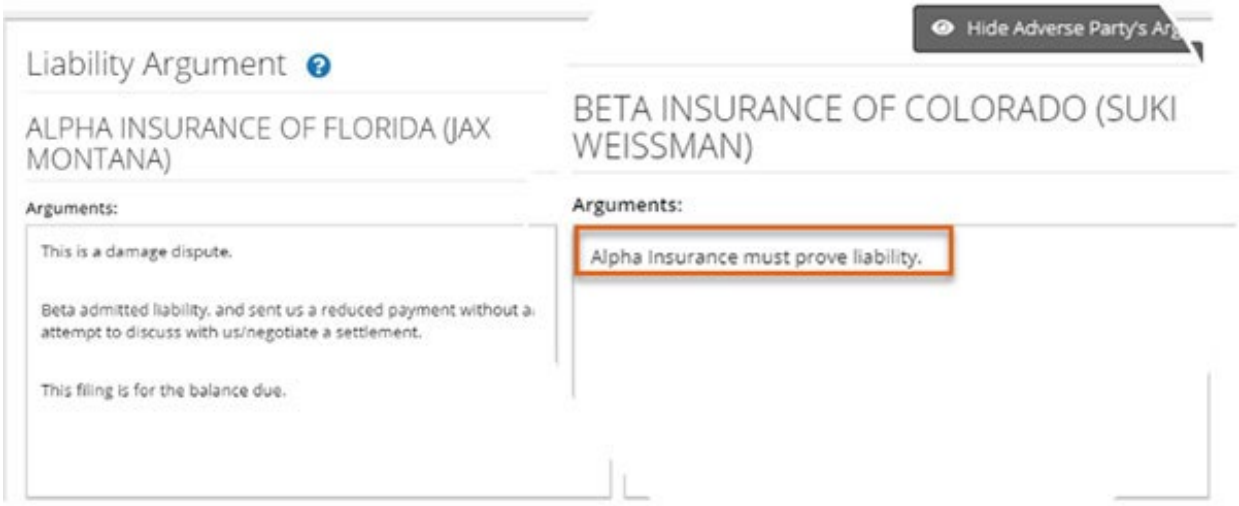
A frequently asked question is whether proof of payment is required to prove damages. The distinction between proof of payment and proof of damages is important. Proof of payment is necessary only when a Responding Party, through its answer, asserts the jurisdictional exclusion of subrogation prohibited, arguing the lack of a subrogatable claim. If not challenged, the presumption is the Recovering Party has made payment to its insured and a subrogation claim exists. A challenge should not simply be raised because the Recovering Party 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 there would be no payment to a repair facility.

Liability Not Argued and Prior Payments

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

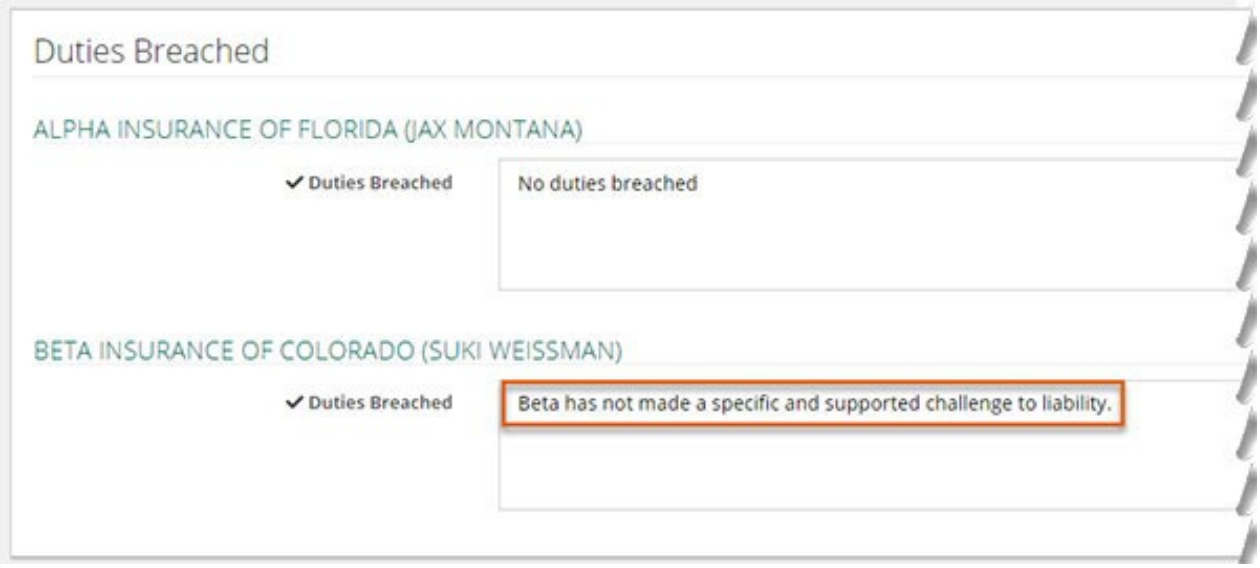
If the Recovering Party included liability arguments regarding the loss and proved one or more of them that will result in a recovery based on state negligence law, enter the breach of duty, where provided, and continue to hear the damage dispute.

If the Recovering Party 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 Party] has not made a specific and supported challenge to liability." Please see the last visual. Then, continue to hear the damage dispute.


Hide Adverse Party's Ar
Liability Argument
ALPHA INSURANCE OF FLORIDA (JAX MONTANA)
Arguments:
This is a damage dispute.
Beta admitted liability, and sent us a reduced payment without a attempt to discuss with us/negotiate a settlement.
This filing is for the balance due.
BETA INSURANCE OF COLORADO (SUKI WEISSMAN)
Arguments:
Alpha Insurance must prove liability.

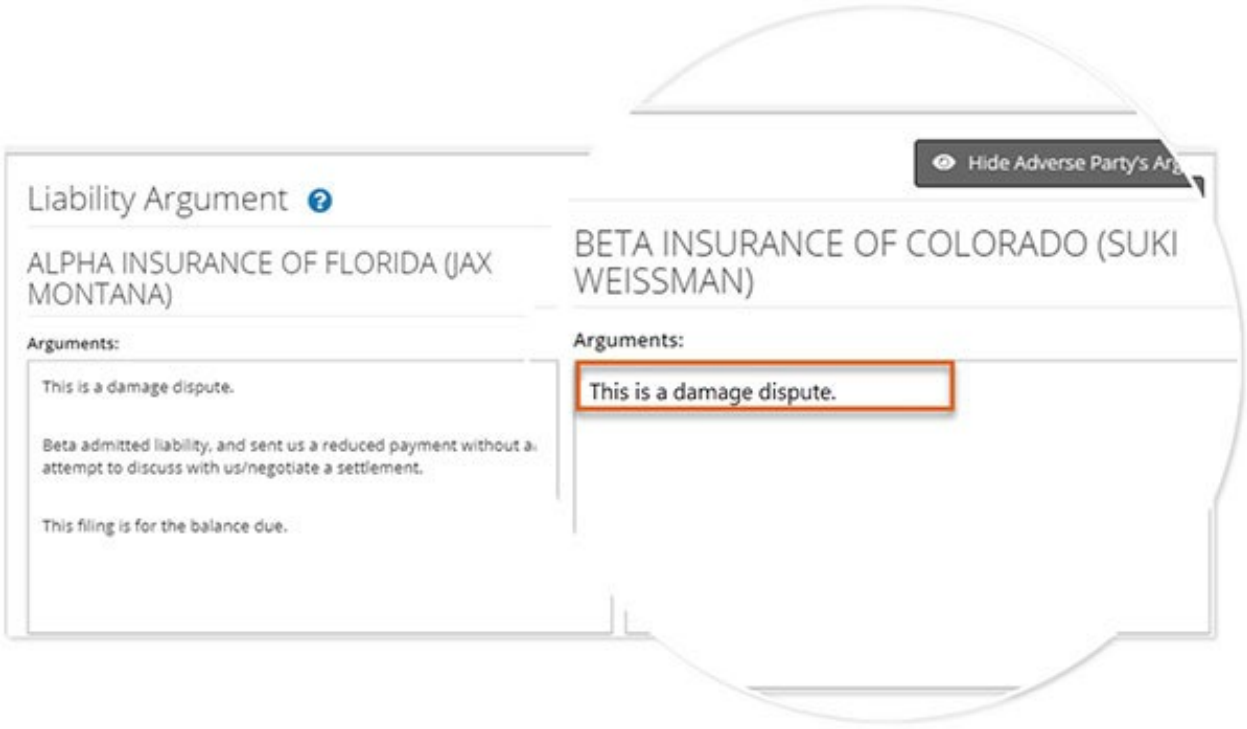

Liability Decision
ALPHA INSURANCE OF FLORIDA (JAX MONTANA)
BETA INSURANCE OF COLORADO (SUKI WEISSMAN) is % liable for ALPHA INSURANCE OF FLORIDA (JAX MONTANA)'s
has already admitte 0% for ALPHA INSURANCE OF FLORIDA (JAX MONTANA)'s damages.
ALPHA INSURANCE OF FLORIDA (JAX MONTANA) is % liable for their own damages
Modify Contribution


Payments
Party
Acknowledged: $0.00
Alleged: $8,000.00
Proven: $0.00
Show Details
BETA INSURANCE OF COLORADO (SUKI WEISSMAN), 100% Liable
$8,000.00
Review



You will also hear cases in which the Responding Party 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 Party 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 Party 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 Party fails to submit an answer, leaving you with only the Recovering Party'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 Party 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 Party is properly notified each time a case is submitted, and, per AF Rules, the Responding Party has ample time to submit its reply (30 days). It is the responsibility of the Responding Party 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 Party presents its liability argument and attaches minimal evidence. The Responding Party will then present its version of the loss, but it provides little to no evidence in support of its argument. While the Responding Party 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 Party argues they were backing from their parking space when they saw the Responding Party begin backing from their space across the aisle. They state they stopped their vehicle, sounded their horn, but the Responding Party kept backing and hit the Recovering Party's vehicle. They attached a summary of their driver's statement, which supports their loss facts. The Responding Party argues when backing they saw the Recovering Party start backing and that they, the Responding party, stopped backing. They argue that the Recovering Party 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 Party 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 Party's loss facts.

The Responding Party 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 Party's argument. The Recovering Party has met their burden of proof.

Scenario 2

The Recovering Party files an arbitration arguing that they were stopped for a red light when the Responding Party rear ended their vehicle. The Recovering Party provides their driver's statement and photos of the Drivers' License and Insurance Card for the Responding Party's female driver. The Responding Party 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 Party's driver's statement supports their version of the loss. The photos of the Drivers' License and Insurance Card supports the Responding Party's driver

was at the scene of the accident. The Responding Party'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 Party 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 Party's statement simply states they were not involved in the loss. Based on the preponderance of the evidence, the Recovering Party's evidence supports the Responding Party's involvement in this loss.

Driver Versus Driver and 50/50 Cases

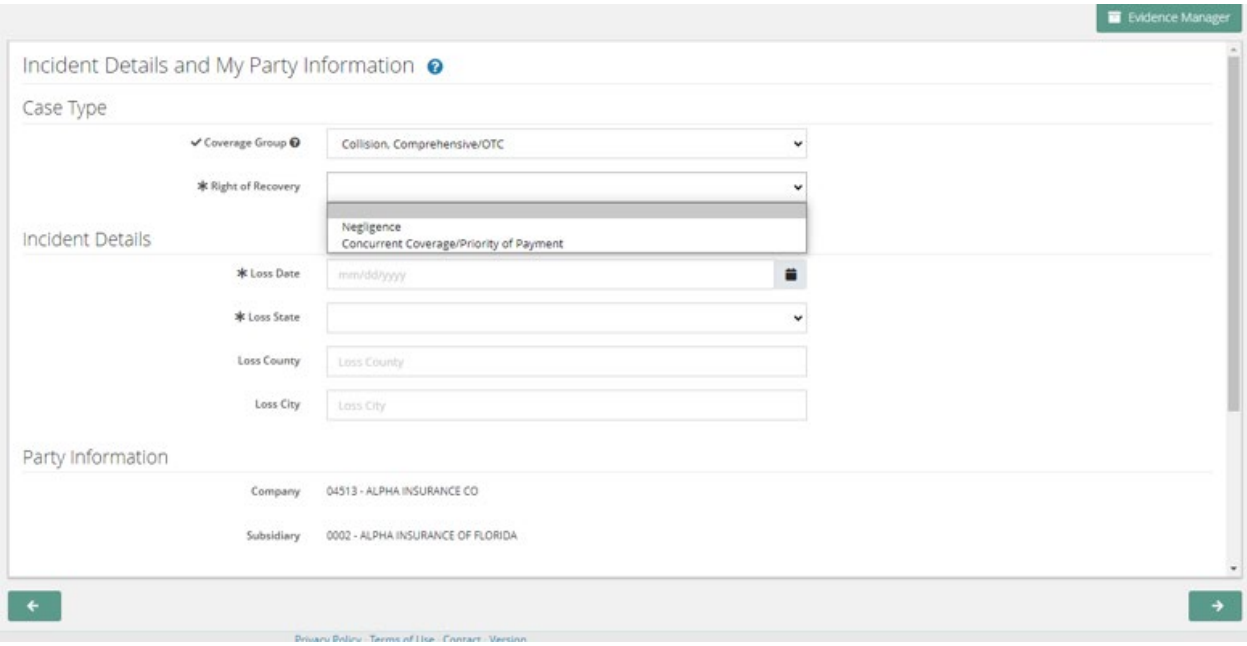
Liability filings involving driver versus driver and 50/50 claims are entirely different situations. A driver versus driver claim is where both parties have conflicting versions of the accident with no independent evidence (i.e., witness statement, point of impact) to corroborate either version. Each 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 Party's right rear quarter panel was the point of impact. In reviewing the statements and evidence, you determine the Responding Party had control of the intersection, and the Recovering Party had the last clear chance to avoid the impact. You conclude the points of impact are favorable to the Responding Party, 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 Party 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 Party 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 Party pleads no liability policy was in effect or denial of coverage with a letter for any other reason, arbitration will lack jurisdiction over the party/case.

Feature Damages

The Recovering Party 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 Party. The Recovering Party must also support its damages (i.e., estimates, total loss documentation, and/or rental invoice).

If a Responding Party 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 Party arguing that the Recovering Party 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 Party's position. You would have the discretion to deny the Responding Party's damage dispute (award all proven damages) and explain this in the Damages Justification field. The exception is when the Responding Party 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 Party 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 Party 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 Party 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 Party'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 Party 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 Party 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 Party's proposed amount, since this is the amount they deem reasonable or are willing to pay. An exception would be when the Responding Party makes a math error or typo. For example, the Responding Party argues they owe 15 days of rental at $30.00 per day for $450.00. In error, the Responding Party enters $500.00 into the proposed amount field. The arbitrator can correct the Responding Party's input error and award the proven $450.00.

Example

Liability Decision: The Recovering Party (ABC Ins.) proved liability at 80 percent versus Responding Party (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 Party (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 Party has proven, the reduced amount proven by the Responding Party, 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 Party's position or another proven amount.

Auto Forum Example

The Recovering Party'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 Party argues that only 15 days of rental is owed, as repairs should have been completed in this timeframe. The Responding Party'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 Party's allegations are supported based on the evidence submitted. You will award the full damages if the Responding Party's arguments are not supported. You will award the Responding Party'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 Party incurred or what the Responding Party 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 Party proved via repair estimate that the repair should have been completed in 15 days, not 20 days. Accordingly, the Recovering Party is awarded the reduced amount of $450 for rental."

If a Responding Party raises a damages argument in accordance with Rule 2-5, you should review the Recovering Party's evidence and damage dispute rebuttal, if applicable, to respond to the dispute. The Responding Party 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 Party 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 Party 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 filer 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 filer 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 Party 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.

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 Party does not attach evidence to the damage feature. The explanation reads, “When the Recovering Party does not properly attach evidence to the Feature Damages workflow step to support its damages and this is raised by the Responding Party 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 Party can dispute specific damages if the documentation was previously shared.”

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

Another situation you will come across when hearing cases is when the Recovering Party submits rebuttal evidence to refute the Responding Party’s damage arguments. The following example demonstrates 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 Party 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.

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 payment types that we have seen change from paper to electronic are towing and rental. It is common for the Recovering Party to provide electronic proof of damages without the corresponding physical invoice. Knowing that the Recovering Party does not possess a traditional bill due to its electronic connection with certain vendors, these proofs of electronic damages are acceptable proofs of damages.

Credit for Prior Payments

Arbitrators will hear cases in which the Responding Party has made a prior payment(s) to the Recovering Party. 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 Party's bank? Clearing the bank means the issued payment was cashed/deposited by the Recovering Party.

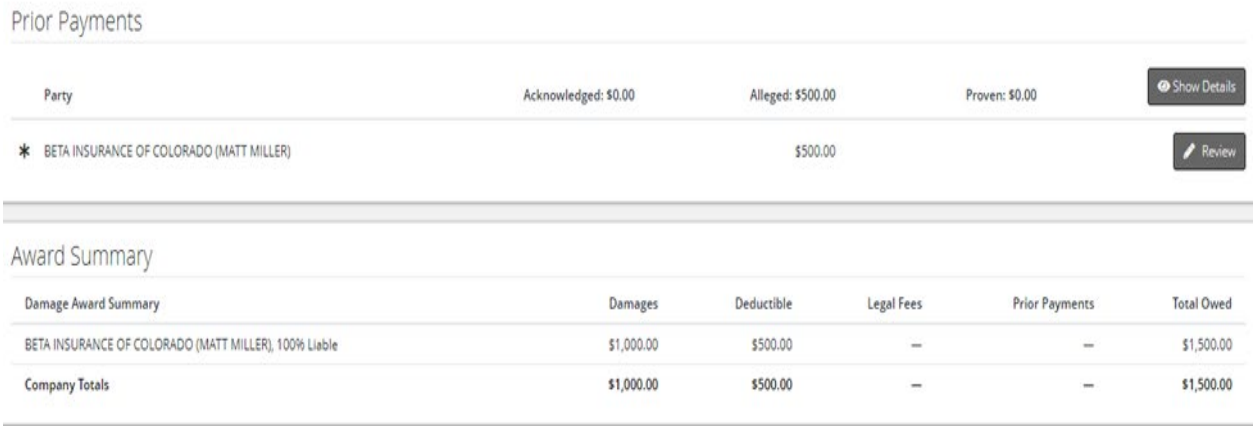
The wording that each company uses in its proofs varies. If the issued payment was cashed/deposited, it may appear with a date of payment or use status terms such as *Paid*, *Cleared*, *Honored*, etc., to show it was cashed/deposited. These payments, including those made via electronic funds transfer (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

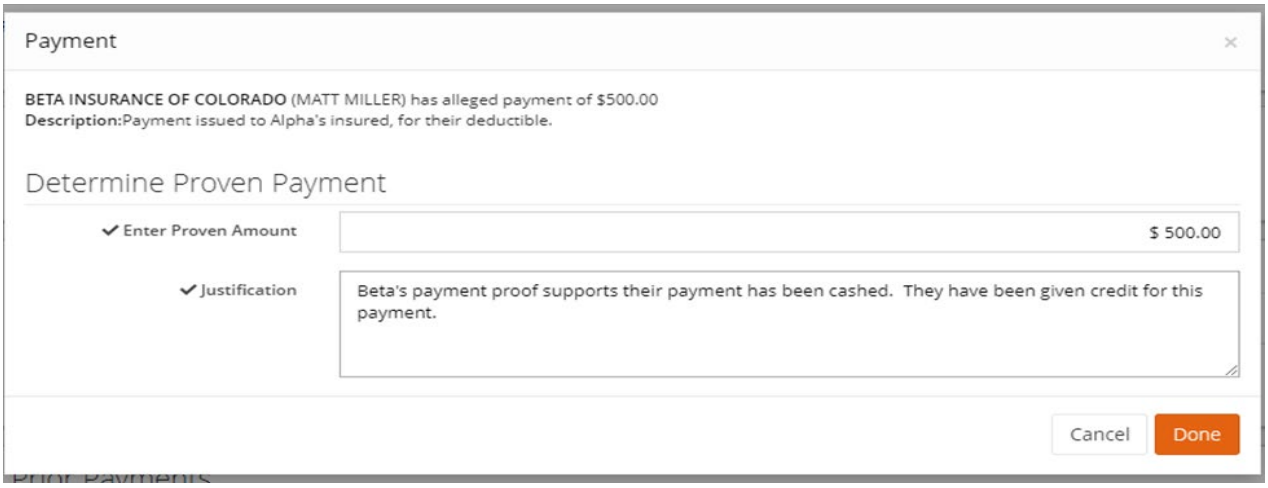
The Recovering Party files for its full claim amount, and the Responding Party enters an alleged payment amount into the prior payment section.

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

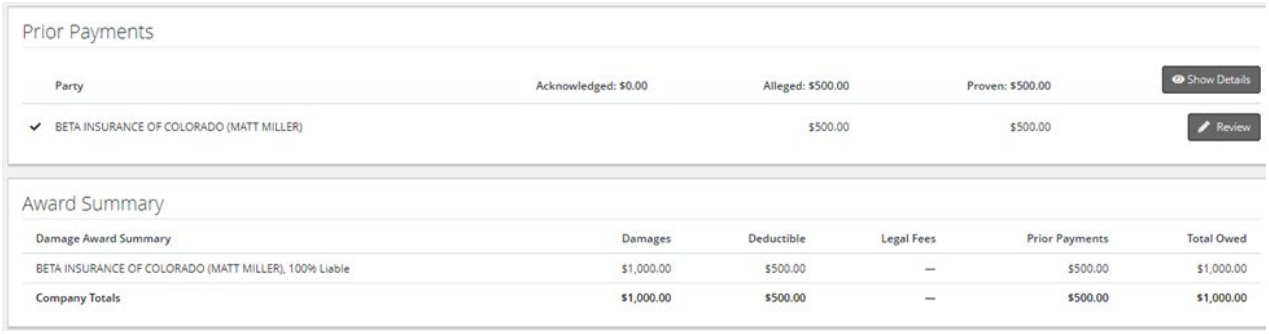


You will now review the Responding Party's evidence and determine if it supports that the payment has **cleared** or an EFT was sent. (Some company's proof of payment status shows *paid* or *cashed* to indicate the payment has cleared, i.e., been received and

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.

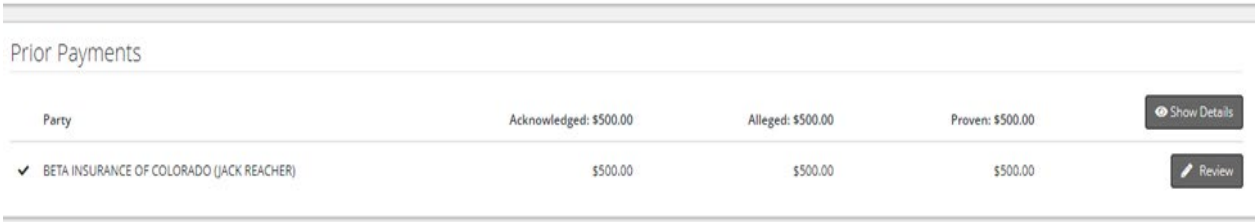


2. If the Responding Party's evidence does not support that its payment has cleared or an EFT was sent, you would enter $0.00 under the Proven Amount in the Prior Payment section. Under the Justification section, you will explain that the Responding Party's payment evidence does not support that its 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.

Scenario 2

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

1. The Responding Party 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 Party alleges a payment amount greater than the amount that has been acknowledged by the Recovering Party. Here, you will want to review the Responding Party'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

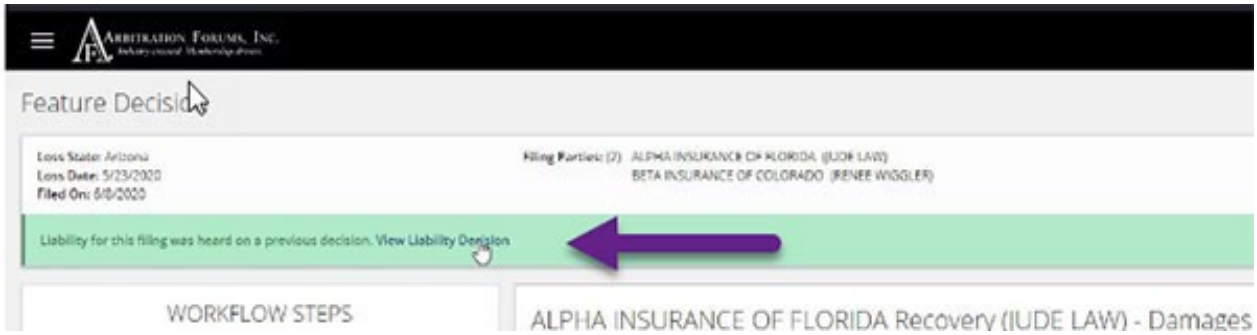
For this filing, the Recovering Party is again only seeking recovery of its auto damages totaling $1,000.00 and its $500.00 deductible. It has not acknowledged receiving a payment from the Responding Party.

1. In addition to its payment issued to the Recovering Party, the Responding Party has included a payment issued to the rental vendor. The payment was for the reimbursement of the Recovering Party's insured's rental. While the payment shows it has cleared, the Recovering Party 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 Party is not seeking these damages.

Scenario 4

In this example, the Recovering Party is seeking supplemental damages. The Responding Party 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 Party was initially awarded $2,300.00 in damages. They are now seeking $800.00 in supplemental damages. The Responding Party enters a prior payment of $2,300.00. The fact the Recovering Party 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 Party should present their argument in the damages section. This will allow the Recovering party the opportunity to rebut the double-dip allegation. For example, the Recovering Party is seeking auto damages totaling $1,000.00, plus its insured's $500.00 deductible. The Responding Party submits as evidence its payment for $800.00, which was issued to the Recovering Party's body shop or insured. In addition to supporting that the payment has cleared, you will need to determine if the Responding Party has supported the payment that was issued for damages sought within the

filing. If the Responding Party has met both requirements, you will then need to decide if the Responding Party should be given credit for its payment in relation to its double-dip argument.

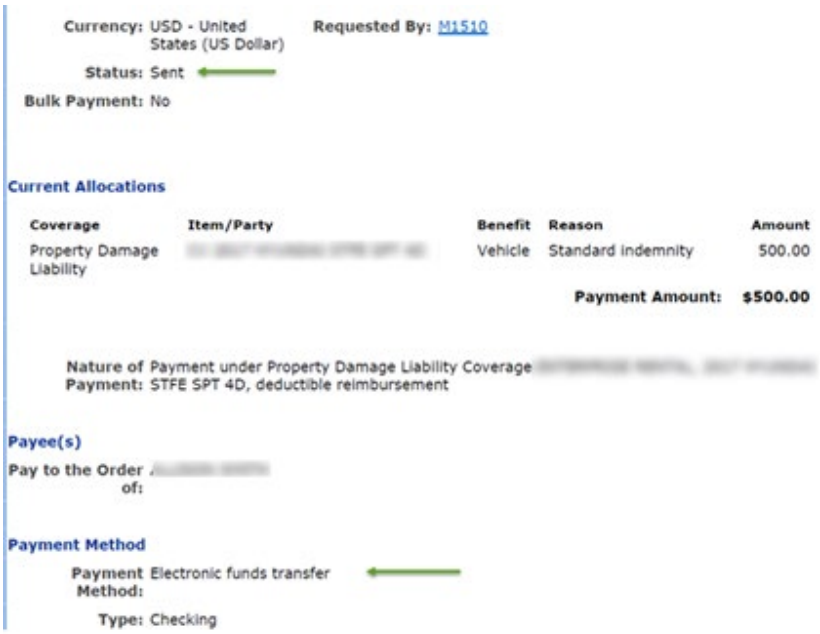
A Responding Party may state that it has paid the Recovering Party's insured directly for the deductible. If the Responding Party's insured has received and processed proof of payment for the deductible, a prior payment credit may be applied for the deductible. Crediting the deductible is done in the prior payment section only. A Responding Party 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 Party has provided evidence that its payment has been cashed, you can only enter the payment credit if the Responding Party 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)

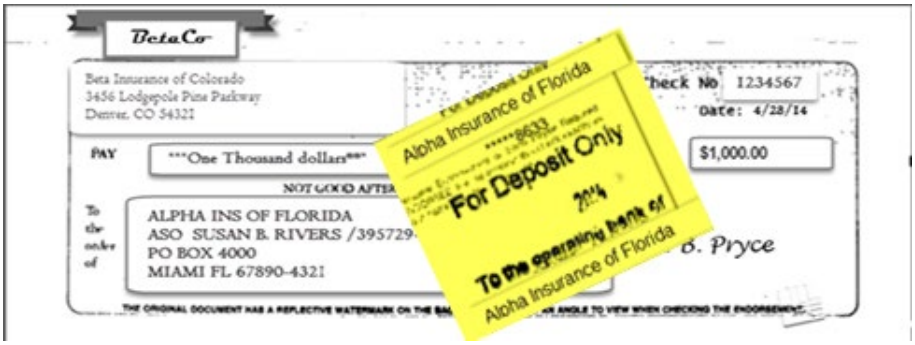
Pay to the Order of: [redacted]

Payment Method

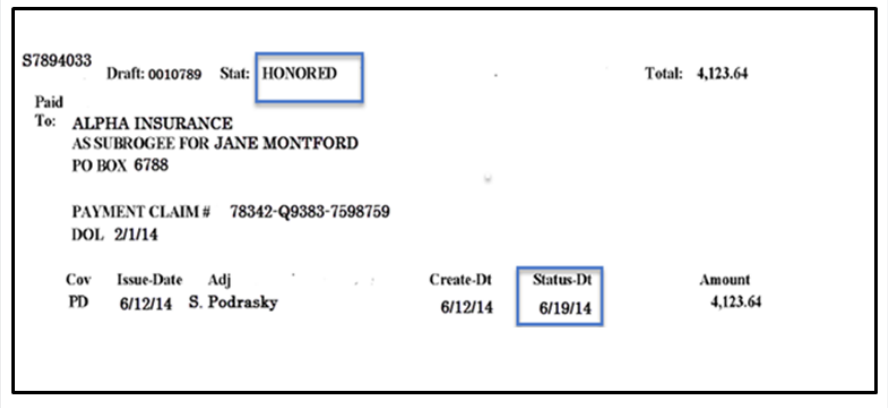
Payment Method: Electronic funds transfer

Type: Checking

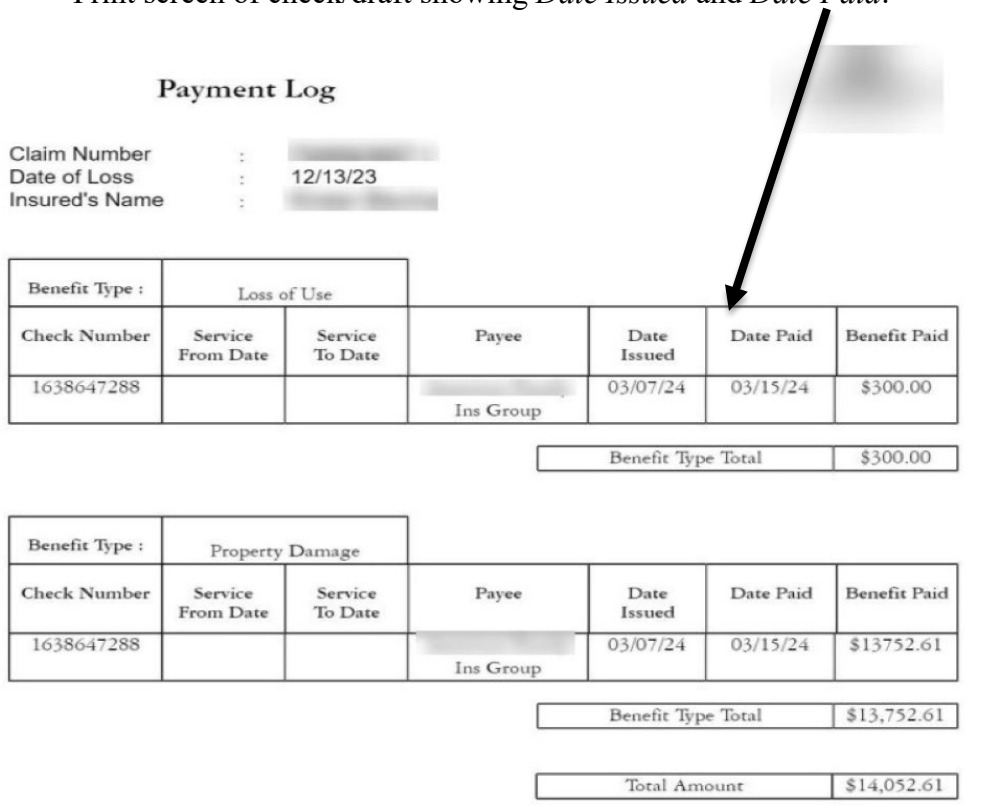
- An actual check/draft with a status of *Deposited/Cashed*:



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



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



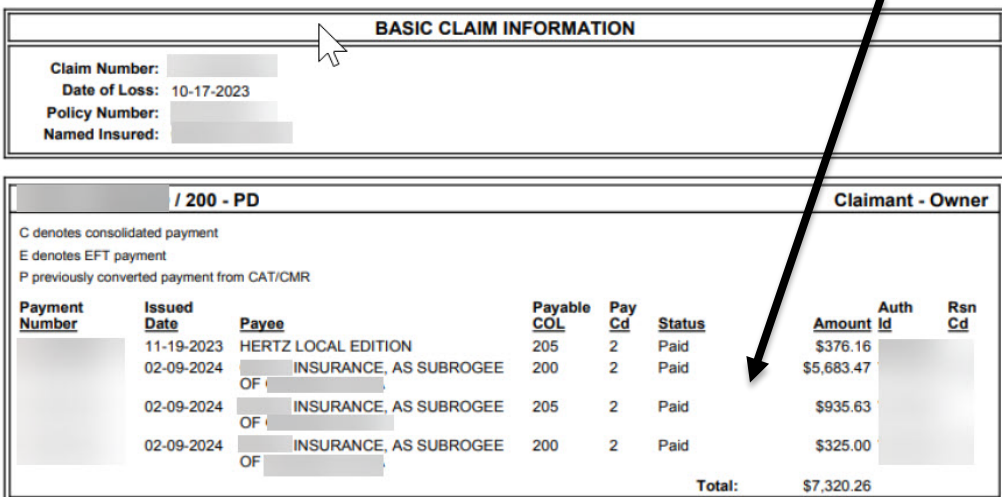
Payment Log

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

Benefit Type :	Loss of Use					
Check Number	Service From Date	Service To Date	Payee	Date Issued	Date Paid	Benefit Paid
1638647288			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			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:
Date of Loss: 10-17-2023
Policy Number:
Named Insured:

/ 200 - PD — Claimant - Owner

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

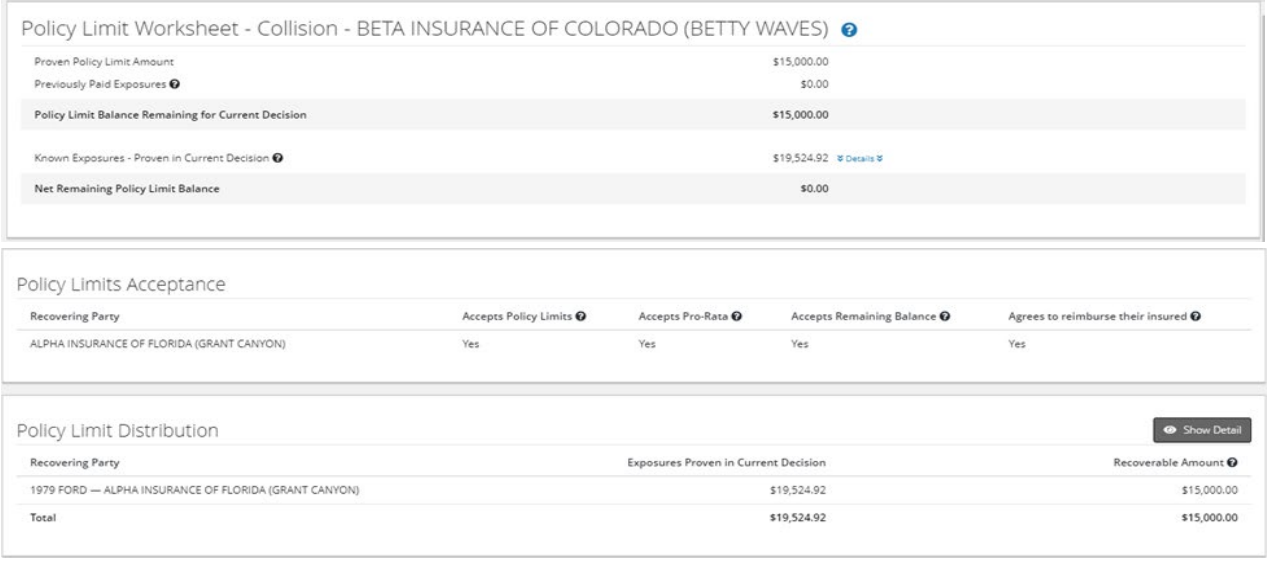
Payment Number	Issued Date	Payee	Payable COL	Pay Cd	Status	Amount	Auth Id	Rsn Cd
	11-19-2023	HERTZ LOCAL EDITION	205	2	Paid	$376.16		
	02-09-2024	INSURANCE, AS SUBROGEE OF	200	2	Paid	$5,683.47		
	02-09-2024	INSURANCE, AS SUBROGEE OF	205	2	Paid	$935.63		
	02-09-2024	INSURANCE, AS SUBROGEE OF	200	2	Paid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

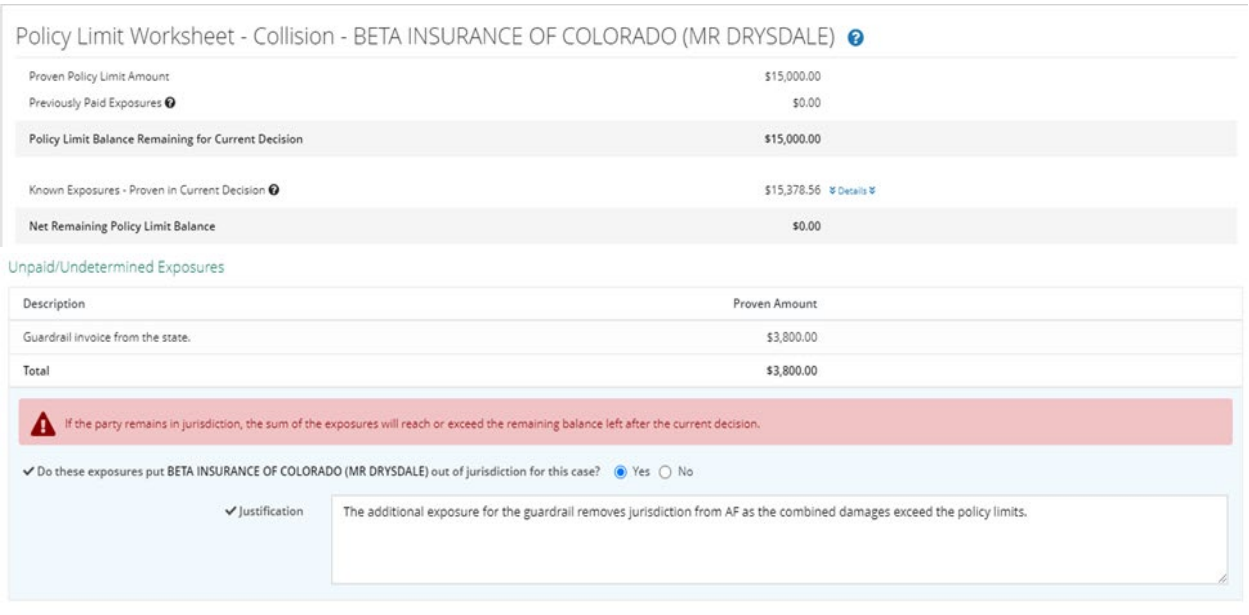
Recovering Party	Accepts Policy Limits	Accepts Pro-Rata	Accepts Remaining Balance	Agrees to reimburse their insured
ALPHA INSURANCE OF FLORIDA (GRANT CANYON)	Yes	Yes	Yes	Yes

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 Party 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 Party 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 Party 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 Party" and "Responding Party."
- 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.