ARBITRATION FORUMS, INC.
Membership driven. Innovation focused.

Guide for Arbitrators

A Resource and Reference Manual
for Member Arbitrators

Arbitrator Support:
Phone: 1-866-977-3434

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Arbitration Forums, Inc. (AF) is pleased to welcome you into a distinguished group of professionals who skillfully and objectively resolve intercompany claim disputes for over 5,000 member companies. As a Member Arbitrator, you join a long line of claim professionals who have served the insurance industry for over 80 years.

AF and the member companies greatly appreciate your service as an arbitrator, as your active participation is critical to the success of the arbitration process. The time you dedicate is important—not only to AF, but to the insurance industry. Your service to the insurance community is highly valued, and we appreciate your support.

Intercompany arbitration greatly affects our members' recovery potential. Each year, approximately 900,000 disputes worth $10 billion in claims are arbitrated through AF.

As such, experience, expertise, and objectivity are essential qualifications of an effective arbitrator. However, **objectivity** is indisputably the most important qualification. It is the foundation of the arbitration system. It is AF's responsibility to preserve complete objectivity in the arbitration process. AF reserves the right not only to appoint, but also to remove or restrict the service of any arbitrator where the objectivity of the process or the decision is in question.

In closing, this Guide for Arbitrators is intended to offer arbitrator assistance when hearing cases. The guide is not meant to override any AF rule or procedure, nor is it intended to be entered as evidence by a Recovering or Responding party. When hearing a case, should you have any questions or concerns, AF encourages you to reach out to our Member Service Center at 866-977-3434 or email arbitratorsupport@arbfile.org.

Ethical Obligations

Arbitrators appointed to AF's arbitration panels accept serious responsibilities that include important ethical obligations. Although 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. All decisions must be based solely on the arguments and evidence presented by the parties to avoid any perception of bias. 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.

In addition, 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 six arbitration programs:

- Automobile Subrogation
- Med Pay Subrogation
- PIP Subrogation
- Property Subrogation
- Special Arbitration
- Uninsured Motorists

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.

The 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. As the arbitrator, you examine the evidence and decide what it "is worth" in regard to the position presented by the party. Evidence should be both relevant and credible to the dispute. A decision should be based on preponderance of evidence in all of the arbitration forums. Remember, as an arbitrator, your role is to 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.

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 possibly 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

As an arbitrator, you have considerable discretion when hearing cases to resolve member disputes. You are not bound by formal rules of evidence that govern litigation, and any evidence the parties wish to submit is admissible, as long as it is listed in the filing. Your role is to weigh all submitted evidence in conjunction with the arguments. It is important to understand that your decisions will be final and binding without the right to rehearing or appeal (except in qualifying Property and Special cases).

For these reasons, it is imperative when hearing cases that you:

- Allow the time that is necessary to hear the case; this means that enough time is spent to thoroughly consider all arguments made and evidence submitted. **Decision quality is the first priority.**
- Address all arguments raised by each party.
- Base your decision on the arguments and evidence presented by the parties. Do not speculate or infer facts. Do not be swayed by arguments made with no evidence to support it.
- Explain how the evidence influenced your decision clearly and concisely. What did a specific item prove or not prove?
- Use the company names, not "Recovering party" and "Responding party."
- Ensure awards correspond with the liability and/or damages finding.

The explanation or rationale for your decision is arguably more important than the decision itself. Win or lose, your explanation provides the basis for your decision. Did the members' arguments and evidence prove their position? If not, explain why the evidence did not support their arguments. If proven, explain the contents of the evidence that proved the members' position. With the exception of evidence associated with damages in the Auto forum, evidence is not viewable to the parties. This is why it is so important to explain the influence of the evidence on your decision.

AF realizes the role of the arbitrator is difficult. As an objective third party, you are presented with, in most cases, two fact patterns from strong advocates. It is your responsibility to review the evidence submitted and render a rational decision. The decision you make may be questioned by one of the parties, but you can mitigate their concerns by ensuring two things—the decision was based on the evidence submitted, and your decision-making rationale is clearly documented in the explanation fields.

Pre-Publication and Post-Publication Quality Reviews

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

Our pre-publication 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.

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.

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

Process Overview

The following section reviews the TRS hearing workflow. Additional training resources for arbitrators are available on AF's website (www.arbfile.org). In addition, AF publishes an "E-Bulletin for Arbitrators" on a regular basis. To subscribe, please visit our Communications Subscription page.

Neutrality, Confidentiality and Privacy Statement

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.

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.

Joint and Several Pleading Example

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 filing member 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 it.

- **Bailment**: Did the Recovering party submit evidence to support bailment applied to the loss and how it affects their 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, as well as 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 may not 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. As such, you will proceed to make a decision 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 it.

- **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 (ies) 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? 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 their position? This exclusion can be used for a variety of 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?

Liability or Recovery Arguments

Liability or recovery arguments is where the parties present their position 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 their 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 Recovering party always has the burden of proof, and 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.

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 dispute. 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.

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. A partial prior payment may have also been made. The Responding party, however, does not specifically enter a percent of liability admitted. In these cases, pre-arbitration correspondence or communication between the parties reflecting that a settlement offer has been made should not be construed as an admission of liability. An offer is not a concession of liability. Prior

correspondence or communication that reflects a settlement offer or liability has been accepted (e.g., E-Subro Hub negotiation messages or prior partial payments) can, however, be used to support that liability has been conceded.

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 tort feasors (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 their 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 a must 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 insurer has made payment to its insured and a subrogation claim exists. NOTE: The above does not apply to self-insured members that own and repairs their vehicles, as there would be no payment to a repair facility.

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, rental invoice).

If a Responding party disputes damages, it must present its damage arguments and proposed amount owed, if any. This includes, but is not limited to, 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. Simply arguing that the Recovering party overpaid the claim or that "rental was excessive" without a specific reason or what the proper amount of damages should be 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 damages 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 above, 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 where 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 a total of $450.00. In error, the Responding party enters $500.00 into the proposed amount field. The arbitrator is allowed to correct the Responding party's input error and award the proven $450.00.

Example

Liability Decision: 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: 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

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 the majority of 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 Arbitrator Support functionality to advise that the Recovering party needs to provide breakdown of front and rear damages.

With regard to 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.

The following chart outlines some disputed damages issues and what to consider from both the Recovering and Responding parties' perspective:

Disputed Issue	Responding Party	Recovering Party
Rental		
Rental Duration	Does the Responding party argue and support its disputed number of days? Does the Responding party consider whether the vehicle was drivable?	Do the labor hours factor approximate days, including weekends, holidays, and supplements? Does the Recovering party provide evidence to prove and support rental days?
Daily Rate	Does the Responding party argue and support its dispute with the rate/car? Does the Responding party's evidence support that it owes basic transportation or another standard?	Does the rental car meet the jurisdictional requirement? Does the Recovering party prove and support the rental car/daily rate as reasonable?
Storage		
Storage Duration	Does the evidence support the Responding party's dispute on why the Recovering party's number of days is unreasonable?	Does the Recovering party support that the number of storage days is reasonable?

Daily Rate	Does the Responding party support that this is not in the range of prevailing rates in the area?	Does the Recovering party support that the rate paid was reasonable?
Towing		
No Bill	Does Responding party argue that no bill is in evidence at all or is it a "clearinghouse" bill for towing dispatches?	Does the Recovering party include a bill in support of damages **or** does the evidence support that a tow was reasonable/necessary?
Mileage	Does the Responding party make and support a strong argument that the tow could/should have been shorter?	Does the Recovering party have a plausible reason for a tow that may seem too far?
Charge	Has the Responding party argued and submitted a statute as evidence?	Is there a statute that sets a schedule for tow charges or any other aspects of a tow?
Total Loss		
Value	Has the Responding party proven that the Recovering party deviated from the correct equipment or vendor's guidelines for rating the condition of the vehicle? Has the Responding party included its appraiser's comments to support its condition rating? Does the Responding party support any other reductions (i.e., prior damage) to the value?	Does the Recovering party have accurate information entered into its valuation software (equipment, mileage, tows, condition, year, make, and model)? Has the Recovering party included its appraiser's comments and photos to support its condition rating? Do the comparable vehicles match the loss vehicle, and are they from the same general area? Is there support for any refurbishments made to the vehicle? Is prior damage accurately addressed?
Total vs. Repair	Has the Responding party included calculations to show that the vehicle would not be considered a total loss in this jurisdiction? Remember, a total loss threshold sets the maximum repairs. Estimates below the threshold should include comments on	Is there a statute or case law that mandates a threshold to total versus repair? Has either party included the applicable **statute** for your review? Has the Recovering party included an explanation as to why it chose to total the vehicle (e.g., open items on the

	expected supplements, tear down, or any salvage bids to support totaling the vehicle. If tear down is disputed, is proof provided that the vehicle was an obvious total without tear down? Tear down is a judgment call by the member. A challenge should prove it was not necessary.	estimate, adjuster notes explaining expected supplements)? Do the photos show an obvious total loss? Are there structural issues with the vehicle that would require it to be totaled? Was the vehicle torn down at the time of the inspection? Was tear down supported as being necessary to determine if repairs were appropriate? Tear down is a judgment call by the member.
Parts		
OEM vs. Alternative	Did the Responding party run a parts search close to the estimate/repair dates? Does the Responding party have any statute or case law mandating the use of other than OEM parts?	Did the Recovering party use **any alternative** parts in the repair? Has the Recovering party shown it searched for alternate parts or explained why it did not use alternative parts? Was the age and mileage of the vehicle considered? Were the parts proven to be available during repairs? Does the vehicle meet the common practice of using OEM parts on newer model vehicles with low mileage?
Labor Rate	What supporting documentation is provided by the Responding party to support the lower labor rate? If the Responding party uses the repair estimate it wrote to support a lower rate, does it show that the body shop agreed to the lower rate?	Does the Recovering party support the rate paid with an estimate of completed repairs? Is there an agreed-upon price with the shop listed on the estimate?
Betterment	Does the Responding party prove the equipment has depreciated? Who completed an inspection? Is life expectancy taken into	Does the Recovering party explain paying the full cost of the equipment and not taking betterment based on age and/or mileage?

	account? Are there photos showing wear?	
Labor Hours	What evidence does the Responding party submit to prove that the labor hours should have been reduced?	Does the Recovering party comment on the need for the resulting labor hours for the operation?
Paint Procedures	Does the Responding party prove that it was not necessary or not the responsibility of the at-fault party? Is there evidence to support that certain procedure(s) were not necessary?	Does the Recovering party prove that the paint procedure was necessary?
Diminution in Value		
If sought by an insurer:	- If right of recovery is disputed, did the Responder support that the jurisdiction has not clearly addressed the circumstances permitting automobile DV damages by statute or published case law? - If the amount sought is disputed, did the Responder submit evidence to support a lesser amount or no award at all?	- Is right of recovery proven via published case law directly analyzing automobile diminished value damages? - Are there supports included to justify the amount sought? - Is proof of payment to its insured for DV provided?
If sought by a self-insured owner of the vehicle involved in the loss:	- If ownership is disputed, did the Responder provide evidence to support its position? - If right of recovery is disputed, did the Responder support that the jurisdiction has not clearly addressed the circumstances permitting automobile DV damages by statute or published case law? - If the amount sought is disputed, did the Responder	- Is ownership proven? - Is right of recovery proven via statute or published case law directly analyzing automobile diminished value damages? - Are there supports included to justify the amount such as

	submit evidence to support a lesser amount or no award at all?	an appraisal, formula, or expert report?
If sought by a self-insured that leases vehicles (leaseholder):	- If the leaseholder's obligation for the damages is disputed, did the Recovering party support the damages have been charged/billed by the leasing company? - If right of recovery by a leaseholder is disputed, does the evidence (published case law or statute) prove the argument? - If the amount of DV damages sought is disputed, did the responder submit evidence that supports a lesser amount or no award at all?	- Does the evidence (i.e., lease agreement) support the leaseholder is responsible for the vehicle's value and/or that the diminished value has been charged/billed by the leasing company? - Is right of recovery proven via statute or published case law directly analyzing automobile diminished value damages sought by leaseholders? - Are there supports included to justify the amount sought such as an appraisal, formula, or expert report?
Damage Supports Not Shared (Not applicable to Auto cases since damage supports are shared)		
	Does the Responding party dispute the damages sought because the Recovering party did not properly attach their evidence on the Feature Damages workflow step, so they are not viewable?	Did the Recovering party not properly attach their evidence supporting the damages when they initially submitted the filing (subsequently attaching during a Revisit if not in compliance with Rule 2-1)?

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, expert), scene photos, vehicle photos, police reports, diagrams, adjuster notes, estimates, cause and origin reports, and medical records.

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 proof of damages.

Awards

After you have spent your time on the "hard part" (making the call on liability and/or damages), it's 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? Don't 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 includes? 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.

Additional Information

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.

First, let's look at to whom the denial letter should be addressed under (b). The rule says the denial letter is "to the party seeking (liability) coverage." This is significant because the named insured is not the only party who may be looking for liability coverage under the policy and for

whom liability coverage may be denied. 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.

The same is true in the scenario where a non-permissive driver was operating the Responding party's vehicle. 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. In these types of cases, the denial of coverage letter must be addressed to the person for whom coverage is actually denied, not the named insured whose coverage is still available. Since the denial letter must be addressed to the party for whom coverage is denied, a copy of a letter addressed to anyone else regarding the denial is not sufficient for the purpose of this rule. This includes letters where the correct party is courtesy-copied.

The second issue concerns when a denial-of-coverage letter is needed. This would be any time it is possible to send it. Obviously, 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" tort feasor.

It is important to note that the failure to submit a copy of a denial-of-coverage letter for the simple reason that such letters are not sent as a company practice does not overcome the requirement of the rule. 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.

Deferments

A deferment is a one-year postponement from the date of filing of an arbitration filing. Any party may request the 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.

An adverse party may challenge the deferment and justify their 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 has 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. 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 in order 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 limits 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.

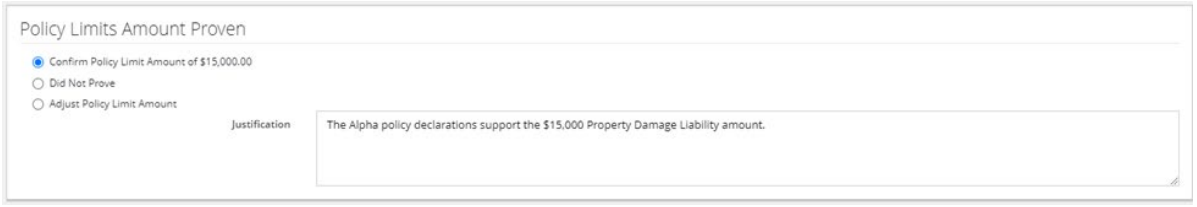
Policy Limits

When a Responding party asserts and supports their 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 lacks jurisdiction over the insured's interest; simply, 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 in excess of 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.

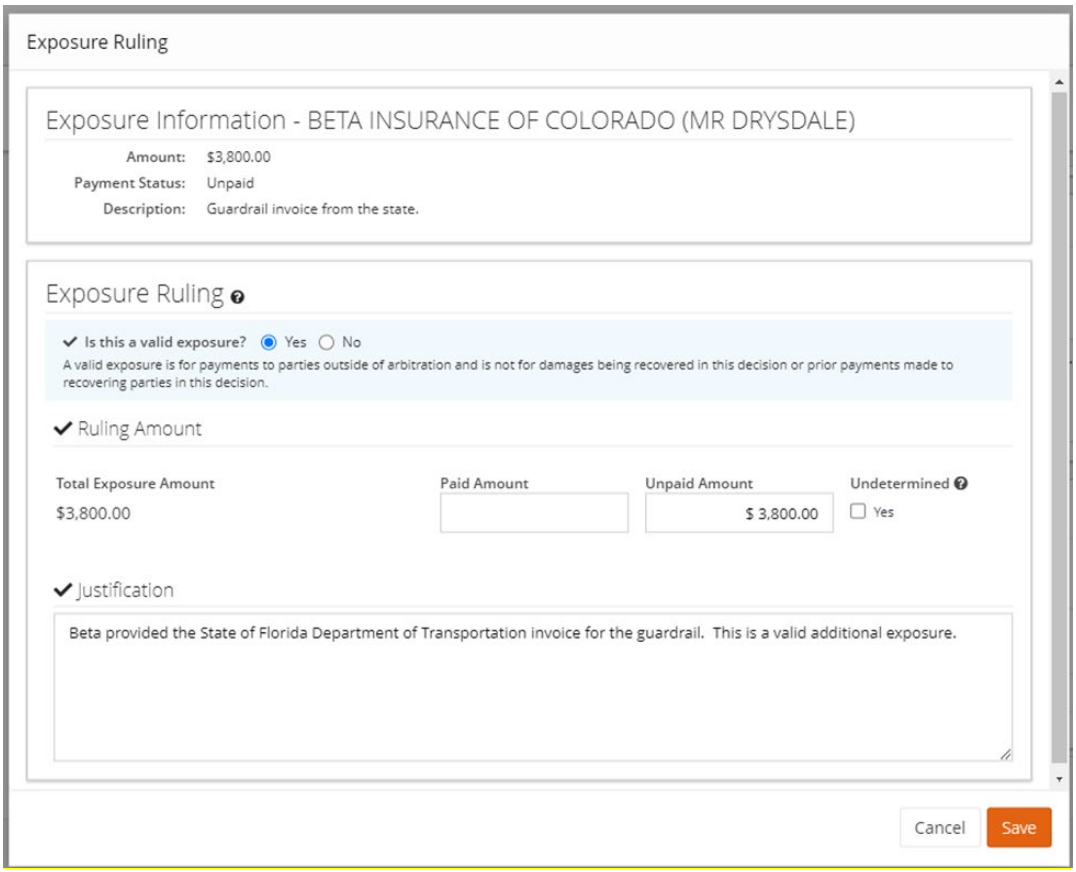
Therefore, if you hear a case wherein the Responding party has raised and supported a jurisdictional exclusion of policy limits (stated amount and provided proof thereof), you will complete the following actions.

1. Review the submitted evidence and make the correct selection in the policy limit section. Below is an example where the evidence confirmed the policy limit amount. The selection of "Did Not Prove" would be applicable if no policy evidence was supplied in the filing. There will be times 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 have to be reviewed in order 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, there are three selections in the exposure section. The three selections are "Paid Amount," "Unpaid Amount," and "Undetermined." A Paid Amount is an amount paid to a third party for damages not being claimed in the filing. An Unpaid Amount is a known exposure amount that has not been paid and is not being requested in the filing. An Undetermined amount is an exposure with an unknown damage amount and the party will be owed damages not being claimed in the filing.

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

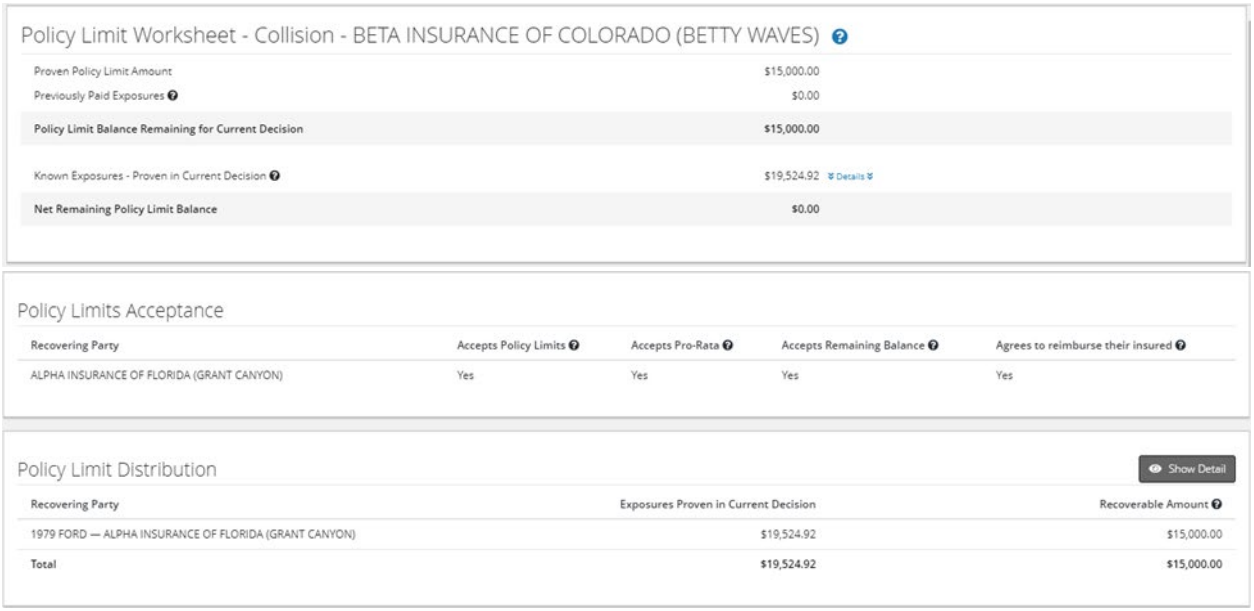


It is also important to note that the Responding party may cite potential out-of-pocket expenses on the part of the Recovering party's insured as an additional exposure. Stating that the Recovering party's insured may have out-of-pocket expenses is not enough information to be a valid exposure. There 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 examples below.

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 the majority of information and award on your behalf.

Below are two examples covering different policy limits scenarios. 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**

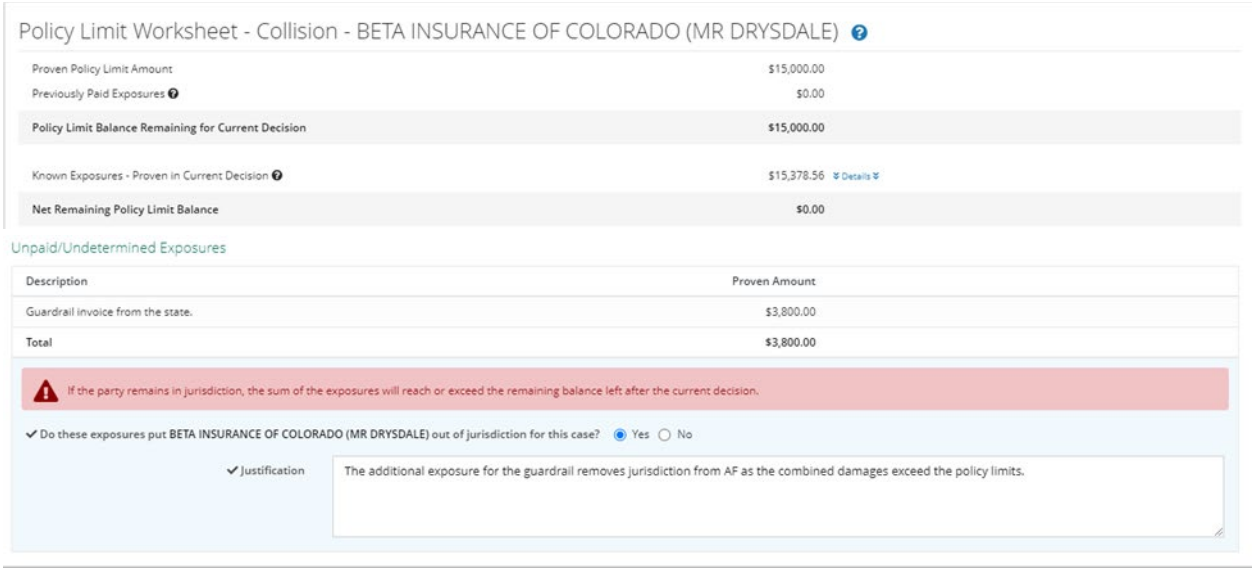
Policy Limits Acceptance

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



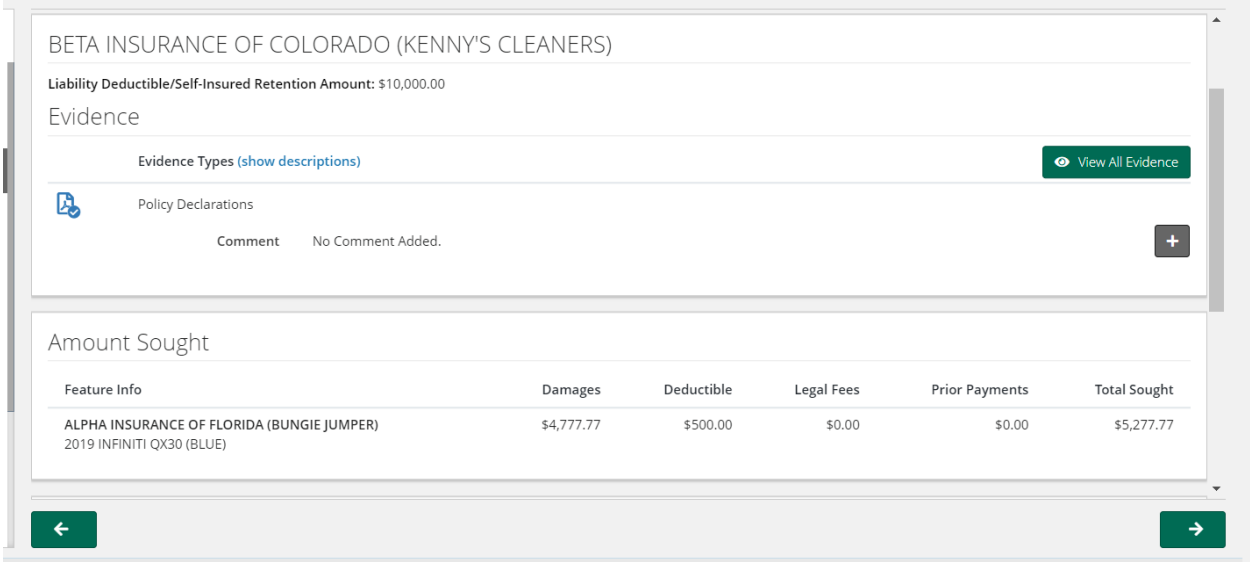
In the second example, the additional exposure (Florida Department of Transportation) is not a member of arbitration. Therefore, AF does not have jurisdiction to award damages from the Beta policy limits. The case would be placed out of jurisdiction even if the Recovering party has agreed to a pro rata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

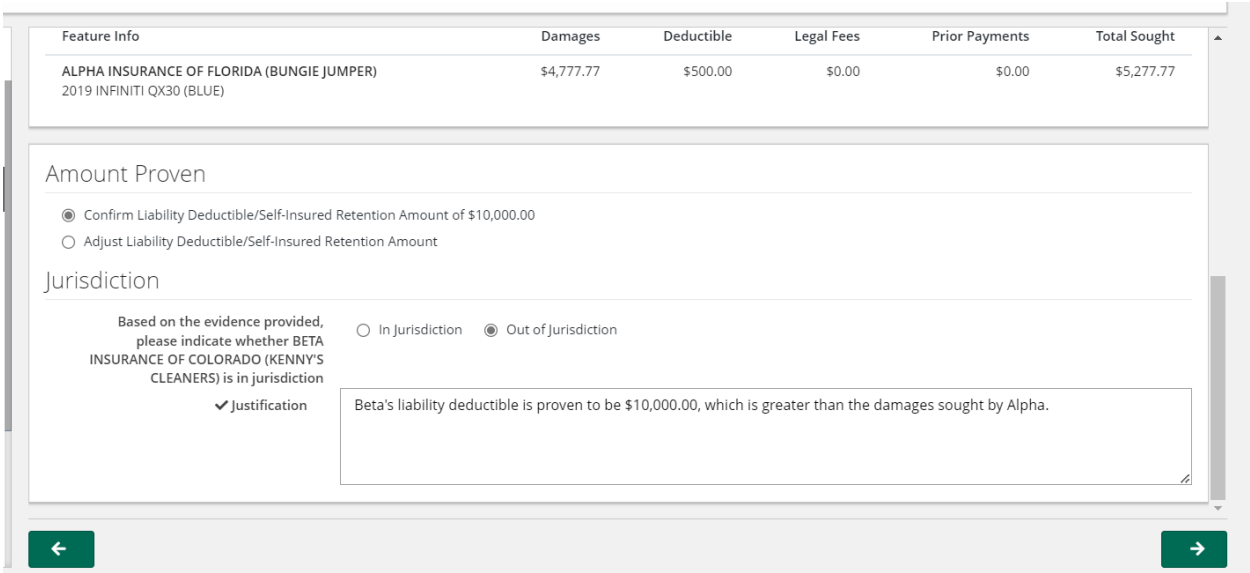
Liability Deductibles

Some cases will involve Responding parties with a liability deductible or self-insured retained limit (SIR). These are amounts that the Responding party's insured is responsible to pay **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.

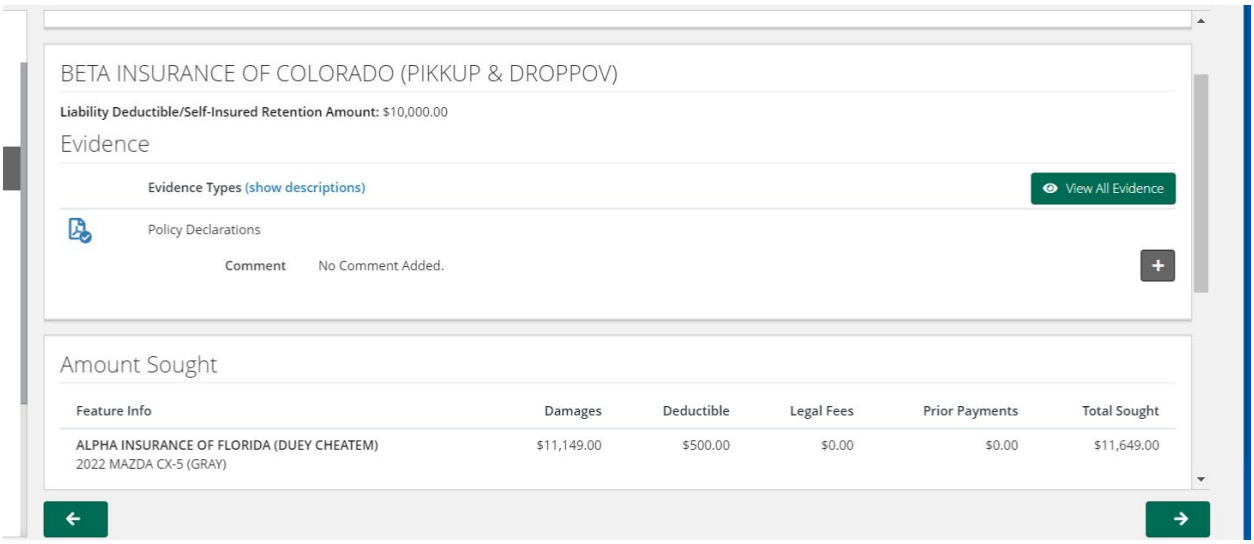


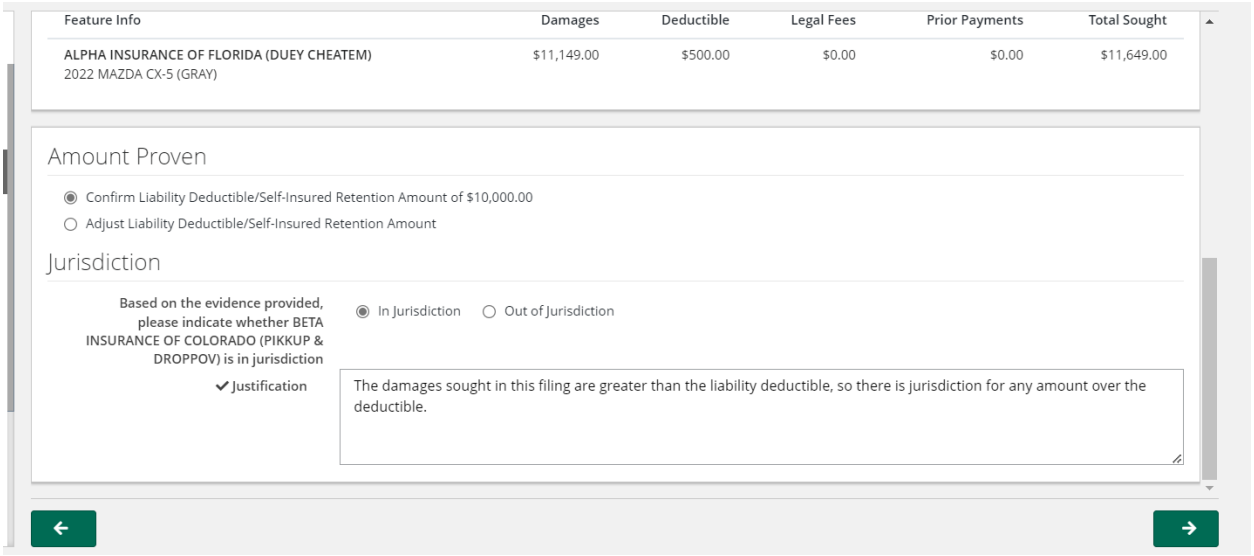
The Responding party would include a copy of their declarations page or a screenshot of their coverages to prove the liability deductible, and the arbitrator should grant the Jurisdictional Exclusion.



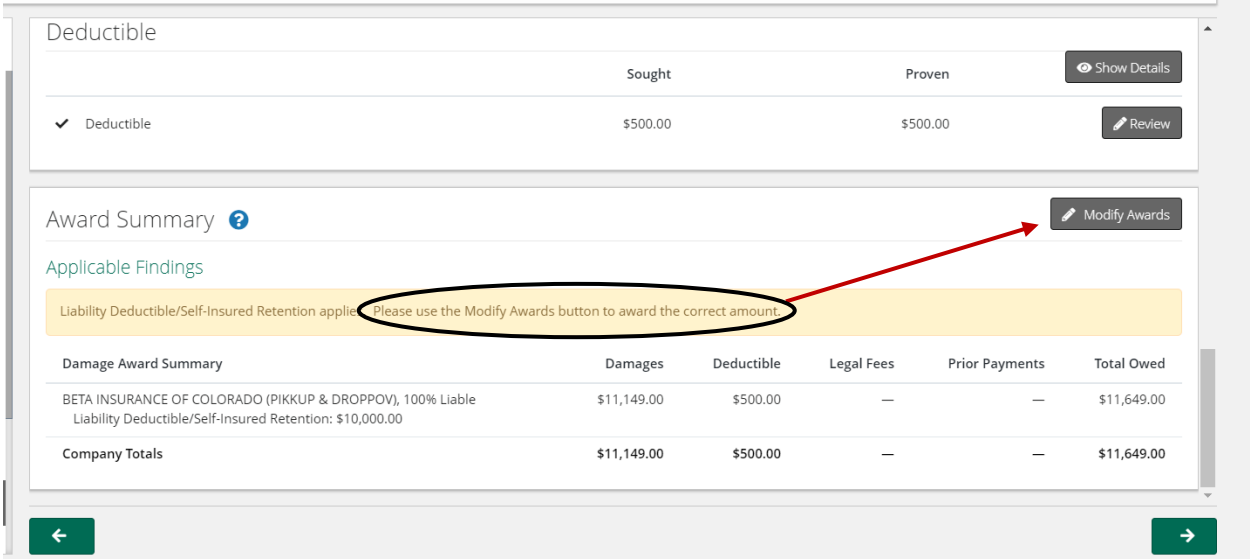
In other cases, the Responding party has a liability deductible that is less than the Recovering party's damages. If the Responding party asserts a Jurisdictional Exclusion, the arbitrator should determine if the liability assessment and proven damages would result in an award over or under the liability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

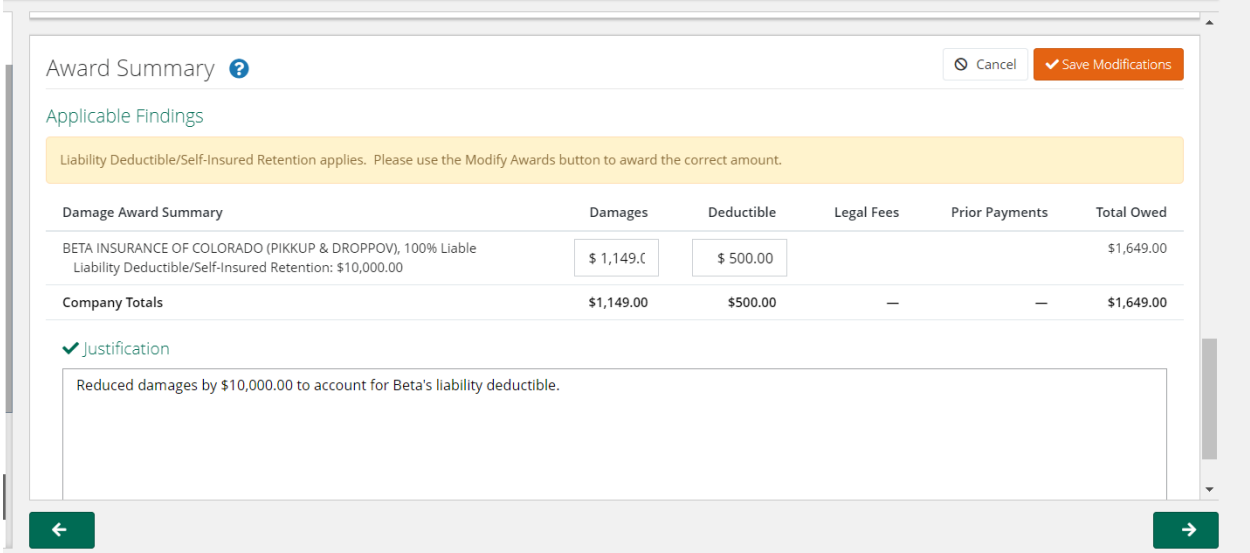




Once the liability decision is entered, the system will calculate the total award in excess of the liability deductible.



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.

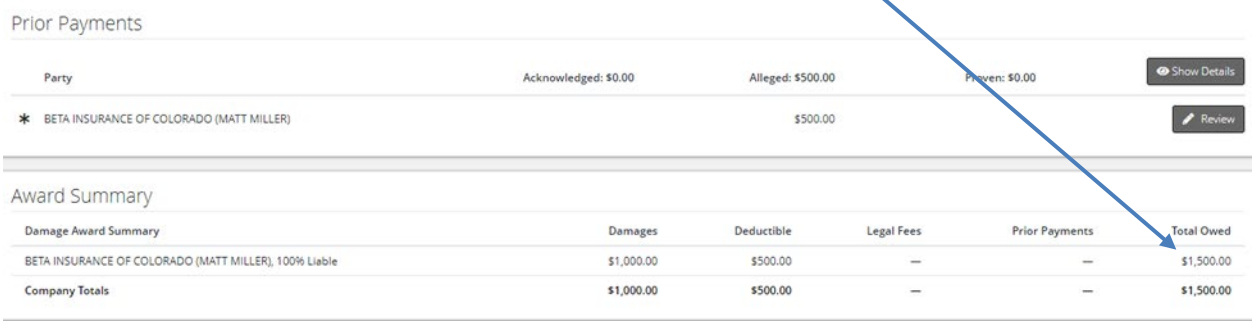
Credit for Prior Payments

Arbitrators will hear cases where 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.

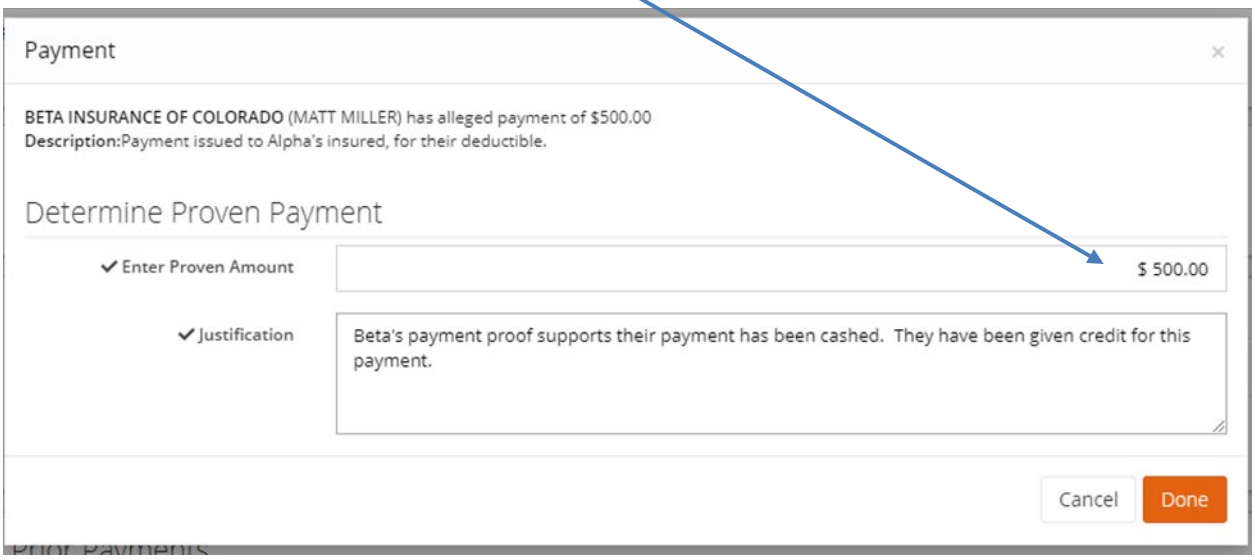
Scenario 1

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

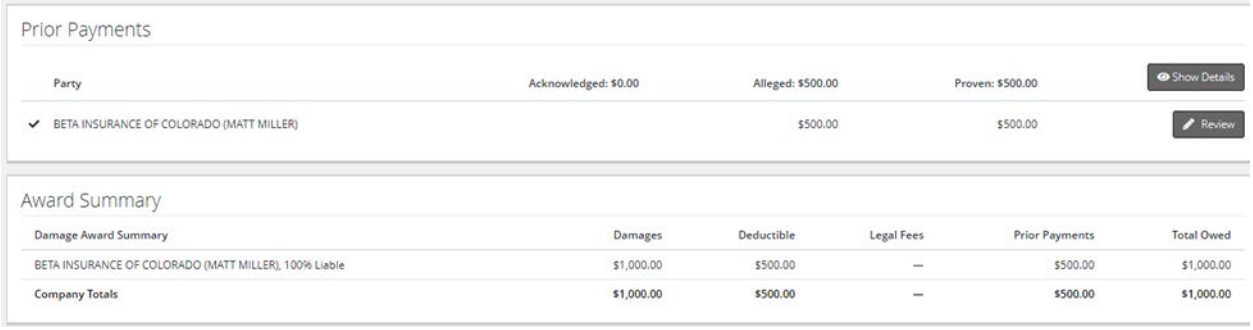
1. Here, the Recovering party files for $1,000 in auto damages, plus their $500.00 deductible. The Responding party asserts it has paid $500.00 to the Recovering party. You have determined liability at 100% and award "All Damages." This generates an award of $1,500.00 (Auto damages, plus deductible).



You will now review the Responding party's evidence and determine if it supports that their payment has **cleared** or an EFT was sent. (Some companies 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 below.



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 below, the proven damages, less the payment, have been awarded in the amount of $1,000.00.

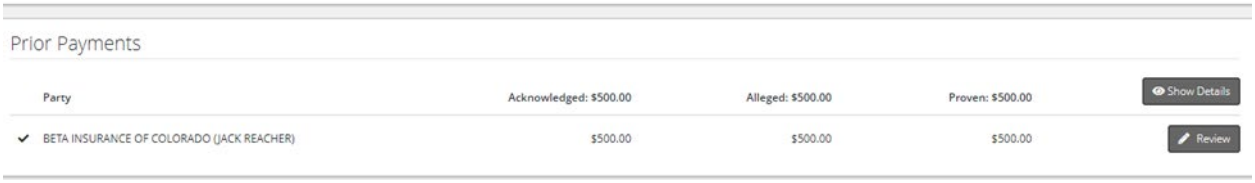


2. If the Responding party's evidence does not support that their payment has cleared or an EFT was sent, you would enter $0.00 under the Proven Amount of the Prior Payment section. Under the Justification section, you will explain that the Responding party's payment evidence does not support that their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

Scenario 2

The Recovering party files for its full claim amount (same as Scenario 1). For this filing, the Recovering party acknowledges they have 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, as shown below.

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. 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 their auto damages totaling $1,000.00 and their $500.00 deductible. They have not acknowledged receiving a payment from the Responding party.

1. In addition to their 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 their insured's rental. Since the 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.

Double-Dip Payments

The Prior Payment section is the only area within the decision where double-dip payments can be addressed. For example, the Recovering party is seeking auto damages totaling $1,000.00, plus their insured's $500.00 deductible. The Responding party submits into evidence their 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 was issued for damages sought within the filing. If the Responding party has met both of these requirements, you will then need to decide if the

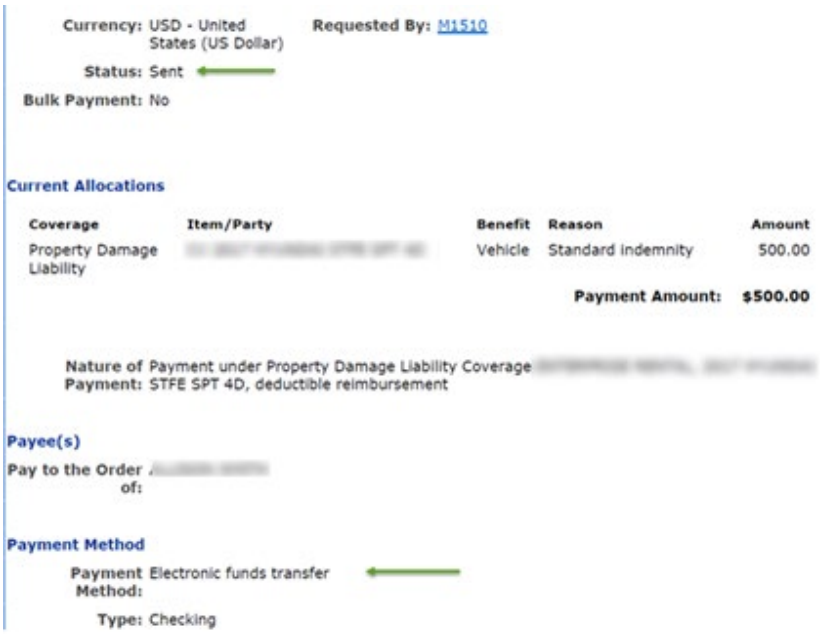
Responding party should be given credit for their payment in relation to their double-dip argument.

Final Prior Payment Considerations

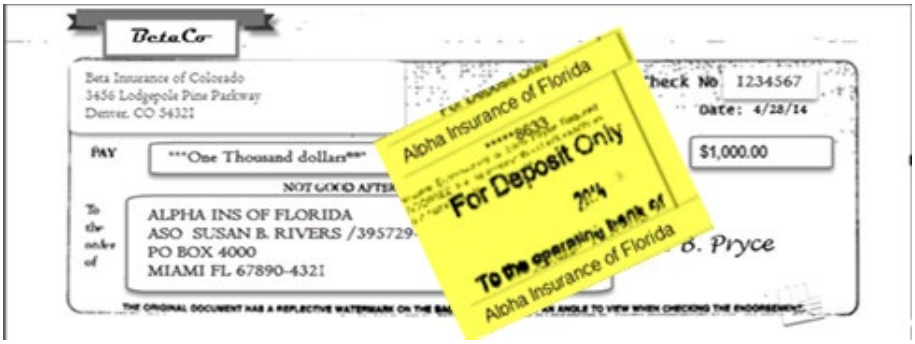
Remember, even when the Responding party has provided evidence that their payment has been cashed, you can only enter the payment credit if the Responding party has entered the alleged amount properly in the Prior Payment section. You cannot modify the award or reduce damages to apply a payment credit.

Examples of Proof of Payments

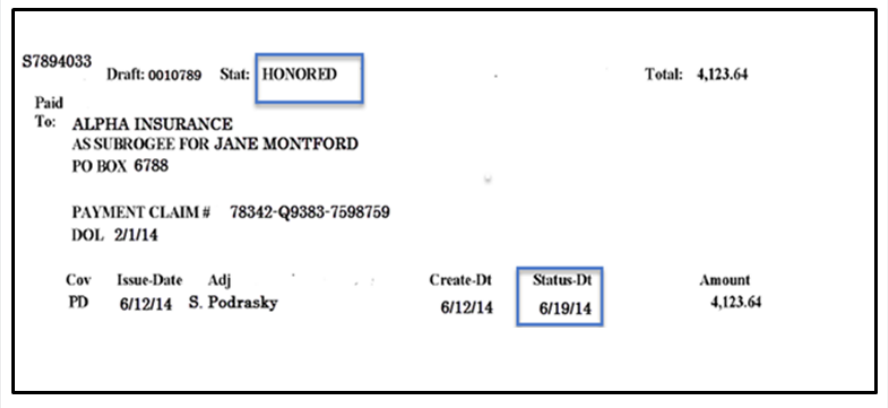
- A print screen of EFT with status of "sent"



- An actual check/draft with status of "deposit/cashed"



- A print screen of check/draft with status of "honored/cashed"



S7894033 Draft: 0010789 Stat: HONORED Total: 4,123.64

Paid To: ALPHA INSURANCE
AS SUBROGEE FOR JANE MONTFORD
PO BOX 6788

PAYMENT CLAIM # 78342-Q9383-7598759
DOL 2/1/14

Cov	Issue-Date	Adj	Create-Dt	Status-Dt	Amount
PD	6/12/14	S. Podrasky	6/12/14	6/19/14	4,123.64

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.