

## **CANADIAN INTER-COMPANY ARBITRATION AGREEMENT**

WHEREAS, it is the object of companies which are now or may hereafter be signatories to arbitrate disputes among themselves, the undersigned hereby accepts and binds itself to the following articles for inter-company arbitration.

### **ARTICLE FIRST:**

Signatory companies are bound to forego litigation and in place thereof submit to arbitration any questions or disputes which may arise as hereinafter set forth:

Any physical damage subrogation claims, including business interruption related thereto, not in excess of the amount currently stipulated in the Agreement Respecting Standardization of Claim Forms and Practices, and Guidelines for the Settlement of Claims.

This Article shall not apply to:

- a) Any subrogation claim for the enforcement of which a lawsuit was instituted prior to, and is pending, at the time this agreement is signed.
- b) Any subrogation claim as to which a company asserts a defense of lack of coverage on any grounds.
- c) Any subrogation claim relating to the following specialized coverages:
  - (1) Boiler and Machinery
  - (2) Aviation
  - (3) Ocean Marine
- d) Any subrogation claim where the total legal liability loss exposure from all sources is in excess of the amount currently stipulated in the Agreement Respecting Standardization of Claim Forms and Practices, and Guidelines for the Settlement of Claims except with the consent of the controverting parties. This exception shall not affect in any manner the position of any other parties having interest in the same occurrence.

### **ARTICLE SECOND:**

Any controversy, including policy coverage and interpretations, between or among signatory companies involving any claim or other matter relating thereto and not included in Article First hereof or which involve amounts in excess of those stated therein may also be submitted to arbitration under this Agreement with the consent of the parties.

**ARTICLE THIRD:**

The Canadian Insurance Claims Manager's Association, is authorized:

- a) To make appropriate rules and regulations for the presentation and determination of controversies under this Agreement.
- b) To select the places where arbitration facilities are to be available, and adopt a policy for selection and appointment of Arbitration Panels.
- c) To prescribe territorial jurisdictions of Arbitration Panels.
- d) To make appropriate rules and regulations to apportion equitably among arbitration companies the operating expense of the arbitration program.
- e) To authorize and approve as signatories to this Agreement such insurance carriers as may be invited to participate in the arbitration program and also to compel the withdrawal of any signatory from the program for failure to conform with the Agreement or the rules and regulations issued thereunder.

**ARTICLE FOURTH:**

An Arbitration Chairman shall be appointed by each chapter of the Canadian Insurance Claims Managers' Association, who shall exercise general supervision of the implementation of the Agreement and the rules and regulations thereof. Arbitration Panels shall be appointed under the authority of the Arbitration Chairman and shall function in the following manner:

- a) An Arbitration Panel shall consist of a chairman and two other members selected by him, except that controverting parties may mutually agree to less than three arbitrators in a specific case.
- b) Where the amount in dispute is less than 10% of the applicable limit specified in Article First, a one member panel shall be selected.
- c) The members of Arbitration Panel shall be selected on the basis of their experience and qualifications.
- d) All Panel members shall serve without compensation.
- e) The decision of the majority of an Arbitration Panel shall be final and binding upon the parties to the controversy without the right of rehearing or appeal.
- f) No member of an Arbitration Panel shall serve on a panel hearing a case in which his company is directly or indirectly interested.

**DIRECTED ARBITRATIONS:**

Where the applicant and respondent agree to arbitrate a case which does not fall within Article First, the parties have the option of selecting a chairman mutually acceptable, who will in turn select the other two members of the panels as per Article Four Rule A.

Should the parties be unable to agree on a chairman, they shall each:

- a) Submit the names of two qualified panel members to the Arbitration Director.
- b) The Arbitration Director will randomly draw the Chairman from the four names submitted.
- c) The Chairman shall proceed as per Article Fourth.

**ARTICLE FIFTH:**

Any signatory company may withdraw from this Agreement by notice in writing to the Canadian Insurance Claims Managers' Association. Such withdrawal will become effective sixty (60) days after receipt of such notice except as to cases then pending before Arbitration. The effective date of withdrawal as to such pending cases shall be upon final settlement.

**ARTICLE SIXTH:**

This agreement shall be binding only upon and between the insurers who signify their adherence thereto by lodging with the Chairman of National Arbitration Committee a form as prescribed below:

Receipt is hereby acknowledged of copy of the Canadian Inter-Company Arbitration Agreement revised in September 1995, as approved by the National Directorate of the Canadian Insurance Claims Managers' Association.

The undersigned insurer(s) agree(s) to become an adherent to and to be bound by the said Agreement in accordance with its terms.

To: The Chairman - National Arbitration Committee  
CICMA - NATIONAL  
c/o Insurance Bureau of Canada  
777 Bay Street, Suite 2400  
P.O. Box 121  
Toronto, Ontario  
M5G 2C8

**NAME OF INSURER(S) (List Companies Here)**

Signed .....  
(Authorized Representative)

Dated .....

If signing for Group, please list companies of your Group that are signatory to this Agreement.

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**ARTICLE SEVENTH:**

Amendments shall originate with the National Arbitration Committee of the Canadian Insurance Claims Managers' Association. Where 90 per cent or more of the subscribers adopt an amendment it shall be binding on all Subscribers effective on a date indicated by the National Arbitration Committee Chairman. He shall set this date only after he is satisfied that more than 80 per cent of the Subscribers have accepted.

**ARBITRATION RULES AND REGULATIONS**

The rules and Regulations hereinafter set forth are promulgated under authority of Article Third of the Canadian Inter-Company Arbitration Agreement.

As a condition precedent to arbitration, senior claims representatives of at least supervisory status of involved companies must make sincere efforts to settle controversies by direct negotiations.

**GENERAL**

1. The Canadian Inter-Company Arbitration Agreement shall be considered applicable to accidents, insured events, or losses occurring only within the territorial limits on Canada, except with the mutual consent of the controverting parties.
2. Copies of the Agreement, the rules and regulations, and current list of signatory companies shall be sent to the Head Office of each signatory company.
3. The Canadian Inter-Company Arbitration Agreement shall be construed to create any causes of action or liabilities not existing in law or equity.
4. The Canadian Inter-Company Arbitration Agreement is applicable only to controversies involving the interests of insurance companies. The interest of the parties other than insurance carriers may not be arbitrated under the Agreement. The fact that such parties may be insureds of signatory companies does not alter this prohibition.
5. In arbitration proceeding and practice the company which initiates the proceeding by filing a request for arbitration of a controverted claim or issue with an Arbitration Secretary, shall be known as the "applicant", and the company or companies against which such controverted claim or issue is asserted shall be known as the "respondent".
6. Controversies between signatory companies and non-signatory companies, if there is mutual consent, may be arbitrated, provided the signatory company involved first obtains and files with the Arbitration Secretary a duly executed "Inter-Company Arbitration Statement".
7. Arbitration of a controversy must be deferred until all companion claims or suits, not subject to arbitration, have been disposed of by settlement or otherwise, except that all parties to the arbitration may agree to waive deferment.

8. Signatory companies are not precluded from interposing a counterclaim when defending a suit instituted by a non-signatory party even though such counterclaim may involve another signatory company in the litigation. Such counterclaim is not to be regarded as a separate and distinct cause of action, but merely as a defense in the lawsuit over which neither signatory company has control.
9. Signatory companies should endeavour to ascertain the identity of the liability insurance carriers in all cases before instituting litigation on subrogation claims. Such litigation must be discontinued promptly upon ascertaining that the liability insurance carrier is a signatory company and any legal costs incurred will be payable by the signatory company which instituted the litigation.
10. Any signatory company asserting a subrogation claim or any signatory company against whom a signatory claim is being made, shall promptly make known its identity.
11. Submission of a case to Arbitration under the Agreement shall have the same force and effect upon signatory companies, with regards to the applicable Statute of Limitations, as if litigation has been instituted. The Agreement does not have application, unless there is mutual consent of the controverting companies, when a case is not submitted prior to the expiration of the governing Statute of Limitations. In the event of a disagreement, in any particular case, as to the application of this regulation, all controverting companies thereto will be bound by any ruling thereon by the Arbitration Chairman.
12. Where the case in arbitration qualifies under IBC Rule Eleven of the Agreement Respecting Standardization of Claim Forms and Practices Guidelines for the Settlement of Claims, the arbitrator(s) shall be bound to apply the Rule as existing at the date of occurrence.
13. The Canadian Inter-Company Arbitration Agreement shall not apply to a case in which there are two or more tortfeasors, one or more of which is insured by non-signatory companies, in respect to the case in dispute.

## **ORGANIZATION**

1. An Arbitration Chairman shall be selected by the Executive of a Chapter of The Canadian Insurance Claims Managers' Association from among the Chapter members and shall serve for a period of one year or until a successor is selected.
2. An Arbitration Secretary shall be appointed, where necessary.

## **JURISDICTION**

Cases shall be under the territorial jurisdiction of any Arbitration Panel appointed by the Chapter in the Province where the accident or other event, which gave rise to the controversy, occurred, except with the prior mutual consent of the controverting parties.

## **FILING FEES**

1. The Canadian Insurance Claims Managers' Association by resolution will prescribe the filing fees for Arbitration.
2. The prescribed filing fees shall be paid by the applicant company to the Arbitration Secretary at the time of filing the "Inter-Company Arbitration Statement". The prescribed filing fee shall also be paid in the same manner by a respondent company that files a counterclaim. The Arbitration Secretary shall not accept a case for arbitration unless and until the prescribed filing fee is paid. Filing fees once paid to the Secretary shall not be refunded.
3. The Arbitration Secretary shall be custodian of the filing fees collected and shall make expenditures therefrom to defray such arbitration expenses as may be authorized from time to time by the Arbitration Chairman.
4. The Canadian Insurance Claims Managers' Association will require Secretaries of Arbitration to submit reports of filing fees collected and disbursed during such periods as may be considered desirable.

## **PROCEDURES**

1. As a condition precedent to arbitration, an applicant must have held pre-arbitration discussions with the respondent indicating the date the discussions were held on the application form. The applicant should appoint a pre-arbitration officer for this purpose. Failure to pre-arbitrate will result in the case being returned to the applicant by the Arbitration Secretary. The filing fee will not be refunded and must be resubmitted should the case be refiled.
2. An Arbitration proceeding is commenced by a senior claims representative of a signatory company filing an "Inter-Company Arbitration Statement. At the same time five copies of the statement are to be submitted by the applicant directly to the senior claims representative of the respondent. If there is more than one respondent company in a case the applicant shall so indicate on the "Inter-Company Arbitration Statement" and send five copies thereof to each respondent company.
3. Statements filed by applicants shall set forth the following information:
  - a) Name of applicant and respondent company together with names and addresses of the local representatives having supervision over the case in controversy.
  - b) The names of the respective insureds of both applicant and respondent.
  - c) Claim file numbers of applicant and respondent (if known).

- d) Kinds of coverage involved under applicant's insurance policy and also respondent's insurance policy (if known).
  - e) Date and place of alleged accident, loss or other insured event.
  - f) Amount of company's claim payment and amount of any applicable deductible interest of its insured.
  - g) A statement describing any pending litigation and its proposed disposition.
  - h) A certification that settlement efforts have been unsuccessful and in cases of controversies under Article Second of the Agreement, that the respondent company has agreed to arbitrate.
  - i) Brief statement of allegations solely as to the issue of controversy.
  - j) Signature of applicant's representative and date signed.
  - k) A diagram showing how the accident occurred, if applicable.
4. Three copies of the "Inter-Company Arbitration Statement" as received from the applicant, shall be completed as to the respondent's portion hereof and filed within 30 days with the Arbitration Secretary by the respondent company as an answer to the applicant's allegations. A copy thereof shall also be transmitted directly to the senior claims representative of the applicant as well as to any other respondent.
5. Answers filed by respondents shall set forth the following information:
- a) Supplement, if and as necessary, the information furnished by applicant as the respondent company's name and address, name of senior claims representative, name of insured, file number and kind of policy coverage.
  - b) State whether coverage and liability as alleged by applicant is admitted.
  - c) Amount of applicant's alleged damages conceded by the respondent.
  - d) Amount of respondent insured's interest in the case, such as deductible property damage coverage, if any.
  - e) Description of any pending litigation and its proposed disposition.
  - f) Whether there is objection to arbitration. If so, the grounds on which the objection is based should be fully stated.



- g) Brief statement of allegations as to the issue in controversy.
  - h) Signature of respondent's representative and date signed.
  - i) A diagram showing how the accident occurred, if applicable.
6. The procedure set out in the preceding paragraphs of this section is also applicable to counterclaims. The "Inter-Company Arbitration Statement" should clearly indicate that it is submitted as a counterclaim and the original arbitration case to which it pertains shall be plainly identified.
7. If a respondent company fails to submit its answer within 30 days after receipt of the applicant's contentions, the Arbitration Secretary shall request the reasons for delay and endeavour to expedite the submission of the respondent's answer. If a respondent company thereafter fails to submit its answer, after being requested to do so, the Secretary shall refer the pertinent facts of the case to the Canadian Insurance Claims Managers' Association. The head office of the signatory company concerned will then be informed of its representative's failure to conform to the prescribed arbitration procedure so that appropriate instructions may be issued by such head office.
8. In the event settlement of a case is effected directly between the parties after it has been referred for arbitration, the applicant company shall forthwith notify the Secretary of such settlement and withdraw the case from arbitration.

## HEARINGS

1. When the Secretary has received the essential facts and contentions from the controverting companies, the issue in the case shall be scheduled for hearing by an Arbitration Panel, and one or more cases may be considered at any scheduled hearing.
2. Hearing date shall be determined by the Chairman of the Arbitration Panel, and one or more cases may be considered at any scheduled hearing.
3. Representatives of controverting companies shall be notified by the Secretary, of the time and place of a scheduled hearing at least one week in advance of the hearing date, when personal representation at such hearing has been requested.
4. Each controverting party shall be entitled, as a matter of right, to only one adjournment of a scheduled hearing which adjournment shall be authorized by the Secretary. Subsequent adjournment may be granted, for cause, by the Arbitration Chairman or his designee.
5. Evidence which controverting companies desire to submit in support of their allegations shall be made available for examination by the arbitrators at the hearing. Such evidence may also be examined by opposing parties at the hearing. If one of the controverting companies fails to produce evidence at a scheduled arbitration hearing, after due notice thereof, the arbitrators may at their discretion consider the information in the "Inter-Company Arbitration Statement" of such party, and render a decision accordingly.

6. Procedures at arbitration hearings shall be informal. Controverting companies are expected to present the facts of their representative cases in a brief, frank and direct manner.
7. The controverting companies shall submit for consideration of the arbitrators, briefs of the law involved, when requested by the Arbitration Panel hearing the case.
8. Controverting companies may if they also desire be represented at arbitration hearings by members of their staffs.
9. Documentary evidence submitted by controverting companies shall be left with the arbitrators for their scrutiny and consideration while reaching a decision.
10. If representatives of controverting companies attend an arbitration hearing they must withdraw after presentation of their cases and may not be present while the arbitrators are considering their decisions.

## **DECISIONS**

1. Arbitration Panels may, upon their own request, render a decision in favour of a respondent company without production of evidence by such respondent if the Panel unanimously agrees following presentation of the applicant's evidence that which applicant has not made out a prima facie case.
2. Arbitration Panels are authorized to make their findings on the law of the locality in which the accident, insured event, or loss occurred. A finding as to the amount of damages in issue should be based upon the facts presented to the arbitrators.
3. Decisions of the arbitrators shall be promptly rendered after consideration of the case, and the evidence submitted by the controverting parties shall be returned promptly.
4. The Chairman of the Arbitration Panel shall prepare a written decision in each case and a copy of same shall be submitted to applicant and respondent companies of the form supplied on the reverse side and the Arbitration Statement, by the Arbitration Secretary who shall retain the original.
5. The decision of an Arbitration Panel shall include the following minimum information:
  - a) date and place of hearing
  - b) names of arbitration panel members
  - c) decision or award
  - d) brief statement of the basis of the findings, such as lack of proof, degree of negligence of the respective parties, other controlling principles of law at the discretion of the arbitration panel

- e) signature of panel chairman.
- 6. A decision of an Arbitration Panel shall be complied with as soon as practicable. Any unwarranted delay on the part of the parties concerned should be reported to the Arbitration Chairman by the prevailing party. Once a decision of the panel has been communicated to the parties, payment of the award(s) shall be made within 30 days. Awards under this Agreement shall have the full force and effect of a judgment rendered in a court of the jurisdiction.
- 7. The payment of the deductible interest (if any) of an Insured of an adverse insurance carrier shall be paid, by each party to the arbitration, to the same extent as the degree of liability assessed by the Arbitration Panel.
- 8. Arbitration Secretaries are authorized to destroy closed files one year after a decision is rendered in a case or a year after the case has been withdrawn from arbitration.