

# Arbitration Hints and Tips

C.I.C.M.A.



A.C.D.S.A.

Presented By:

Canadian Insurance Claims  
Managers Association

Southern Alberta Chapter

# Arbitration Hints and Tips

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- **Types of Losses to be Arbitrated**
  - The Canadian Inter-Company Arbitration Agreement shall be considered applicable to any physical damage subrogation claim, including business interruption related thereto, not in excess of the amount currently stipulated in the IBC Claims Agreement (\$50,000) . It applies within the territorial limits of Canada, except with the mutual consent of the controverting parties.

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- **What Arbitration is NOT meant to be:**
  - A substitute for a thorough investigation
  - Easy

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- **Completing a thorough Application Form**
  - Ensure all blanks in the Application form are completed with appropriate information

APPLICANT			RESPONDENT	
		Insurer		
		Address		
		Insured		
		File Number		
		Date of Loss		
		Location of Loss		
		Amount of Loss		
PRE-ARBITRATION DISCUSSIONS				
<b>Date:</b>			<b>Date:</b>	
<b>Representative:</b>			<b>Representative:</b>	
<b>Date Subro Docs Sent:</b>			<b>Date Subro Docs Sent:</b>	
A REPRESENTATIVE WILL ATTEND HEARING				
<b>Yes or No</b>			<b>Yes or No</b>	

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- Build your legal case for damages using appropriate arguments and supporting evidence. Eg: Duty owed, Duty Breached, Proximate Cause, Damage (quantum) outline
  - ✦ Duty Owed:
    - Provide evidence that the respondent owed a duty of care to the Applicant.
  - ✦ Duty Breached
    - How was this duty of care breached by the respondent
    - Were there witnesses?
    - Do you have statements from witnesses?
      - **Note:** File or Log notes do not constitute a statement. A statement should be reviewed and signed by the person giving the statement.
    - Are you relying on a particular rule within the Arbitration Agreement? If yes, quote it and make the connection as to why this rule applies.

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- ✦ Proximate Cause
  - What were the results of the actions of the Respondent that lead to the damages being claimed?
    - Do you have Expert reports? If so include them in their entirety, highlighting the applicable sections you are referencing in your argument.
- ✦ Damages
  - Provide clear breakdown of the costs associated with the claim
  - Provide clear evidence supporting these costs
  - Provide a clear description of the percentage of the claim on which you are looking for reimbursement.

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## Damages (cont.)

- Ensure the amount claimed in the Opening sections of the Application form is supported by the amounts calculated in the body of the application.

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- **Completing a Thorough Response**

- Ensure you are comfortable that the claim fits within the bounds of the Arbitration agreement. If in your companies opinion it does not, state your reasons why as the initial point in your response.
- Regardless of your positioning in a. above, provide a comprehensive response to the Allegations. If your arguments in a. are not successful, the Arbitration will proceed.

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- **Completing a Thorough Response**
- If you disagree with points raised by the Applicant, clearly outline your reasoning for this and provide supporting evidence. As with the Applicant, statements must be properly obtained and reviewed by the person giving the statement.
- If you disagree with the quantum, clearly outline why you disagree, and provide an alternate calculation of the loss with supporting documents. It is rare that quantum arguments are successful; however there are cases where this has been argued successfully.

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- **General thoughts to Consider**
  - Be clear and concise in your arguments
  - Highlight the most important information
  - If you are including supporting documents, ensure it is clear why they are included
  - Photos should be clearly labelled outlining why they are included
  - Statements should be signed by the person giving the statement
  - Statements should indicate who took the statement ( if applicable)
  - Calculations should be clear and unambiguous
  - Include a copy of the Proof of Loss if required

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## Questions?

