



CANADIAN INTER-COMPANY ARBITRATION AGREEMENT

WHEREAS, it is the object of the active insurance companies which are now or may hereafter become Signatories, to arbitrate disputes among themselves, the Signatories (the Parties to this Agreement) hereby accept and bind themselves to the following Articles for inter-company arbitration.

1 Article One: Definitions

“Agreement” means this Canadian Inter-Company Arbitration Agreement

“Answer” means the portion of the Arbitration Application by which a Respondent replies to the Applicant’s allegations as contained in the Arbitration Application

“Applicant” means an insurer that commences arbitration under this Agreement

“Arbitration Application” means the document, the format of which is to be prescribed by CICMA, by which an arbitration is commenced and by which a Respondent completes an Answer

“Arbitration Chair” means the Chair of any convened Arbitration Panel

“Arbitration Panel” means the people selected in any Arbitration to render a decision on the matters in dispute between the Applicant(s) and Respondent(s) to an Arbitration

“Arbitration Secretary” means the person appointed to assist the Arbitration Director, where and when necessary

“Article” means the various sections of this Agreement

“CICMA” means the Canadian Insurance Claims Managers’ Association

“Insurer” means an active underwriting entity that is carrying on business in Canada as an insurance company

“National Arbitration Director” means the person appointed by CICMA’s National Directorate to oversee the Provincial Arbitration Directors appointed under Article 5 under this Agreement

“Party” means the Applicant(s) and Respondent(s) to an arbitration governed by this Agreement

“Pre-Arbitration Discussion” means a discussion between senior claims representatives, of at least supervisory status, of the parties to canvass settlement of a matter before the Applicant commences arbitration under this Agreement

“Provincial Arbitration Director” means the person appointed by each CICMA Chapter to oversee arbitrations and other matters pursuant to this Agreement

“Respondent” means an insurer against whom an Arbitration Application is brought

“Schedule A” means the Rules and Regulations authorized by Article 4 of this Agreement and attached as Schedule A to this Agreement

“Signatory” means an Insurer or other entity on behalf of an Insurer that has executed this Agreement and has thereby agreed to abide by the terms, conditions, rules, and regulations set out herein

“Subsidiary” means an Insurer owned by another Insurer who is a Signatory of this Agreement

2 Article Two: Agreement to Arbitrate:

Signatories are bound to forego litigation and submit to arbitration any questions or disputes which may arise with respect to any physical damage subrogation claims, including related business interruption claims, not more than the amount currently stipulated in this Agreement.

This Agreement shall apply to all disputes in which the amount at issue is equal to or less than \$50,000, plus the deductible the Applicant has paid its insured, apportioned based on the respective degree of liability of each Party’s insured as specified in the Award.

This section shall not apply to:

- a. Any subrogation claim, the enforcement of which a lawsuit was instituted prior to, and is pending, at the time this Agreement is signed by a Signatory involved in the claim.
- b. Any subrogation claim to which a Signatory asserts a defense of lack of coverage on any grounds.
- c. Any subrogation claim relating to the following specialized coverages:
 - i. Boiler and Machinery
 - ii. Aviation

- iii. 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 this Agreement, except with the consent of the parties.

3 Article 3: Arbitration of Other Disputes

Any dispute, including policy coverage and interpretations, between or among Signatories involving any claim or other matter relating thereto and not included in Article 2 to this Agreement, or which involves amounts in excess of those stated herein may also be submitted to arbitration under this Agreement with the consent of the parties.

4 Article 4: CICMA

CICMA is authorized:

- a. To make appropriate rules and regulations for the presentation and determination of disputes 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 the Parties the operating expenses of the arbitration program.
- e. To authorize and approve as Signatories to this Agreement such insurance companies as may be invited to participate in the arbitration program and to compel the withdrawal of any Signatory from the program for failure to conform with this Agreement or the rules and regulations issued thereunder.
- f. To require Arbitration Directors to submit to the National Treasurer annual reports of filing fees collected and disbursed, pursuant to section B of Schedule A.

5 Article 5: Arbitration Director, Arbitration Secretary, Arbitration Panel

A National Arbitration Director shall be appointed by CICMA's National Directorate.

A Provincial Arbitration Director shall be appointed by each chapter of CICMA, who shall exercise general supervision of the implementation of this Agreement and its rules and regulations.

A Provincial Arbitration Director shall be selected by the Executive of a Chapter of CICMA from among the Chapter members and shall serve for a period of one year or until a successor is selected.

The Provincial Arbitration Director shall be custodian of the filing fees collected, pursuant to section B of Schedule A, and may use those funds to cover such arbitration expenses as may be authorized from time to time by the Provincial Arbitration Director.

Provincial Arbitration Directors shall submit annual reports of filing fees collected and disbursed, to the National Treasurer of CICMA.

An Arbitration Secretary may be appointed, where necessary.

Arbitration Panels shall be appointed under the authority of the Provincial Arbitration Director and shall function in the following manner:

- a. An Arbitration Panel shall consist of an Arbitration Chair and, subject to paragraph f. below, two other members selected by the Provincial Arbitration Director, except that the Parties may mutually agree to less than three arbitrators in a specific case.
- b. The members of Arbitration Panel shall be selected based on their experience and qualifications.
- c. All Arbitration Panel members shall serve without compensation.
- d. The decision of the majority of an Arbitration Panel shall be final and binding upon the Parties without the right of rehearing or appeal.
- e. No member of an Arbitration Panel shall serve on a panel hearing a case in which their company is directly or indirectly interested.
- f. Where the amount in dispute is less than \$5,000, a one-member Arbitration Panel shall be selected.

6 Article 6: Selection by Parties of Arbitration Chair in Limited Matters:

Where the Parties agree to submit a dispute to arbitration which does not fall within the limit specified in Article 2, the Parties have the option of selecting a mutually agreeable Arbitration Chair, who will in turn select the other two members of the Arbitration Panel.

Should the Parties be unable to agree on an Arbitration Chair, they shall each:

- a. Submit the names of two qualified Arbitration Panel members to the Provincial Arbitration Director.
- b. The Provincial Arbitration Director will randomly draw the Arbitration Chair from the names submitted.
- c. The Arbitration Chair shall proceed as per Article 5.

7 Article 7: Withdrawal of Signatory

Any Signatory may withdraw from this Agreement by notice in writing to CICMA. 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 resolution of such pending cases.

8 Article 8: Amendments

Amendments shall originate with the National Arbitration Director. Only Signatories who are not Subsidiaries may vote on amendments. Where 80 per cent or more of the voting Signatories adopt an amendment, it shall be binding on all Signatories and shall become effective on a date to be determined by the National Arbitration Director. The National Arbitration Director shall set this date only after they are satisfied that more than 80 per cent of the voting Signatories have accepted the proposed amendments.

After an amendment or series of amendments are proposed, voting Signatories have 90 days to vote. Any Signatory not casting its vote within 90 days of the amendments being proposed shall lose its right to vote on those amendments. When amendments are proposed, the National Arbitration Director shall set the date when the 90-day voting period shall expire, and such date shall be included in the notice sent to voting Signatories regarding the proposed amendments.

Subsidiaries are not entitled to vote under this section. Any Signatory that owns a Subsidiary shall have only one vote made on behalf of itself and all its Subsidiaries. The Signatory shall advise the National Arbitration Director (or such representative as may be designated by the National Arbitration Director) as to its vote and the identity of each Subsidiary.

Votes shall be counted on the 91st day after the amendments are proposed, or on the next following business day if the 91st day falls on a weekend or holiday.

The National Arbitration Director shall notify Signatories of the results of the vote on or before the 100th day after the amendments are proposed, and shall therein set the date for the amendments to become effective, for any such amendments that are accepted by the requisite number of Signatories.

9 Article 9: General

This 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 Parties.

Copies of this Agreement, current list of Signatories and Subsidiaries, and Schedule A Rules and Regulations shall be sent to the Head Office of each Signatory.

The Agreement shall not be construed to create any causes of action or liabilities not existing in law or equity.

The Agreement is applicable only to disputes involving the interests of Signatories. The interest of the parties other than Signatories may not be arbitrated under the Agreement. The fact that such parties may be insureds of Signatories does not alter this prohibition.

In arbitration proceedings and practice, the Signatory that initiates the proceeding by filing an Arbitration Application of a claim or issue with a Provincial Arbitration Director, shall be known as the "Applicant", and the company or companies against which such disputed claim or issue is asserted shall be known as the "Respondent".

If there is mutual consent, disputes between Signatories and non-signatory companies may be arbitrated, provided the Signatory involved first obtains and files an Arbitration Application with the Provincial Arbitration Director.

Arbitration of a dispute 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.

Signatories are not precluded from bringing a counterclaim when defending a civil suit instituted by a non-signatory party even though such counterclaim may involve another Signatory 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 has control.

Signatories 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, and any legal costs incurred will be payable by the Signatory which instituted the litigation.

Any Signatory asserting a subrogation claim or any Signatory against whom a claim is being made, shall promptly make known its identity.

Submission of a case to Arbitration under the Agreement stops any applicable limitation periods under the laws where the accident or other event, which gave rise to the dispute, occurred. In the event of a disagreement as to the application of a limitation period, all Parties will be bound by any ruling thereon by the Provincial Arbitration Director. Notwithstanding, the Parties can agree to waive the applicable limitation period and proceed to Arbitration under this Agreement.

Where the case in arbitration qualifies under IBC Rule Ten of the Agreement Respecting Standardization of Claim Forms and Practices Guidelines for the Settlement of Claims, the Arbitration Panel shall be bound to apply the Rule as existing at the date of occurrence.

The Agreement shall not apply to a case in which there are two or more proposed Respondents, one or more of which is a non-signatory company, with respect to the case in dispute, unless by mutual consent.

10 Article 10: Signatures

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

This Agreement shall be binding upon and between all Signatories and Subsidiaries. The Signatories certify their intention to be bound by this Agreement by executing the form below, and filing a copy of the executed form with the National Arbitration Director.

To: The National Arbitration Director

info@cicma.ca

NAME OF INSURER OR OTHER ENTITY
(List Principal Company here)

Date:

Authorized Representative Signature

Authorized Representative Name and Position
(Please Print Name)

Please list all Subsidiaries below.

Received by CICMA National Arbitration Director:

Name

Date

SCHEDULE A. ARBITRATION RULES AND REGULATIONS

The Rules and Regulations hereinafter set forth are made by authority of Article 4 of this Agreement.

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

A JURISDICTION

1. Arbitrations shall be conducted 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 dispute, occurred, except with the prior mutual consent of the Parties.

B FILING FEES

2. CICMA will prescribe the filing fees for arbitration by resolution.
3. The prescribed filing fees shall be paid by the Applicant to the Provincial Arbitration Director at the time of filing the Arbitration Application. The prescribed filing fee shall also be paid in the same manner by a Respondent company that files a counterclaim. The Provincial Arbitration Director shall not accept a case for arbitration unless and until the prescribed filing fee is paid. Filing fees are not refundable even where the parties settle the dispute during the Arbitration process.

C COMMENCEMENT OF ARBITRATION

4. No arbitrations shall be commenced until the Parties have engaged in a Pre-Arbitration Discussion. Failure to engage in a Pre-Arbitration Discussion will result in the matter being returned to the Applicant by the Provincial Arbitration Director. The filing fee will not be refunded and must be resubmitted should the matter be refiled. This Rule does not apply

where the Applicant has shown that it has made reasonable efforts to engage the Respondent in a Pre-Arbitration Discussion.

5. An Arbitration proceeding is commenced by a senior claims representative of a Signatory filing an Arbitration Application electronically to the applicable Provincial Arbitration Director or Arbitration Secretary if one has been appointed. At the same time an electronic copy of the Arbitration Application is to be submitted by the Applicant directly to the senior claim's representative of the Respondent. If there is more than one Respondent in a case, the Applicant shall so indicate on the Arbitration Application and send an electronic copy thereof to each Respondent.

6. The Arbitration Application shall set forth the following information:
 - a. Name of Applicant and Respondent together with names and email addresses of the local representatives having supervision over the matter in dispute.
 - b. The names of the respective insureds of the Parties.
 - c. Claim file numbers of the Parties.
 - d. Kinds of coverage involved under the Applicant's insurance policy and Respondent's insurance policy (if known).
 - e. Date and place of alleged accident, loss, or other insured event.
 - f. Amount of Applicant'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 the Parties have engaged in a Pre-Arbitration Discussion, settlement efforts have been unsuccessful, and in cases of disputes under Article 3 of the Agreement, that the Respondent has agreed to arbitrate.
 - i. Brief statement of relevant allegations.
 - j. Signature of Applicant's representative and date signed.
 - k. Attach all supporting documentation and evidence that the Applicant intends to rely on in the matter.

7. 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, name of senior claims representative and their email address, 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 matter, such as deductible property damage coverage, if any.
 - e. Description of any pending litigation and its proposed disposition.
 - f. Whether the Respondent objects to arbitration. If so, the grounds on which the objection is based should be fully stated.
 - g. Brief statement of relevant allegations.
 - h. Signature of Respondent's representative and date signed.
 - i. Attach all supporting documentation and evidence that the Respondent intends to rely on in the matter.
8. The Respondent shall complete and file its Answer within 30 days after it receives the Arbitration Application. Filing is made by sending an electronic copy of the Answer to the Provincial Arbitration Director or Arbitration Secretary if one has been appointed. An electronic copy of the Answer shall also be transmitted directly to the Applicant's representative as indicated in the Arbitration Application, as well as to any other Respondent. All personal information shall be redacted from the Arbitration Application and any supporting documentation.
9. If a Respondent fails to submit its answer within 30 days after receipt of the Applicant's Application, the Provincial Arbitration or Arbitration Secretary shall request the reasons for delay and endeavor 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 Arbitration Director or Arbitration Secretary shall refer the pertinent facts of the case to the National Arbitration Director. The head office of the Respondent 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.

10. The procedure set out in the preceding paragraphs of this section is also applicable to counterclaims. The Arbitration Application should clearly indicate that it is submitted as a counterclaim and the original arbitration case to which it pertains shall be plainly identified.

D SETTLEMENT BEFORE HEARING

11. If the Parties settle a matter in dispute after it has been referred for arbitration, the Applicant shall forthwith notify the Provincial Arbitration Director of such settlement and withdraw the case from arbitration.

E HEARINGS

12. When the Provincial Arbitration Director has received an Arbitration Application and Answer, the issue in the case shall be scheduled for hearing by an Arbitration Panel.
13. All hearings will be conducted virtually on a date to be determined by the Provincial Arbitration Director. The Provincial Arbitration Director shall notify the Parties of the time and place of a scheduled hearing at least one week in advance of the hearing date.
14. Each Party shall be entitled to request one adjournment of a scheduled hearing, which the Provincial Arbitration Director shall allow. Subsequent adjournment may be granted by the Provincial Arbitration Director at their discretion.
15. The evidence at the hearing will consist of all documents a Party has filed with its Arbitration Application or Answer. Parties shall not adduce any oral or additional documentary evidence at the hearing.
16. At the Arbitration Panel's request, Parties shall submit statements of law in a form and matter as directed by the Arbitration Panel.

17. Parties may, if they desire, be represented at arbitration hearings by members of their staff, but not by in-house or outside counsel. A Party's representative may attend to present its case and answer any questions the Arbitration Panel might have about the matter. The Arbitration Panel, in its sole discretion, can limit the allotted time for a Party's representative to present its case.
18. If representatives of Parties attend an arbitration hearing, they must withdraw after they present their case and may not be present while the arbitrators are considering their decisions.

10 ARBITRATION DECISIONS AND AWARDS

19. Arbitration Panels shall 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 shall be based upon the facts and evidence presented to the Arbitration Panel.
20. The Arbitration Panel shall be promptly rendered its decision after the hearing.
21. The Arbitration Chair shall prepare a written decision in the form of an Award and a copy of same shall be submitted to the Provincial Arbitration Director, who will then send copies to the Parties within 5 business days.
22. The Arbitration Panel's Award shall include the following minimum information:
 - a. date and place of hearing
 - b. names of arbitration panel members
 - c. decision or reward
 - 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 the Arbitration Chair.

23. Arbitration Panels may, upon their own request, render a decision in favour of a Respondent without production of evidence by such Respondent if the Panel unanimously agrees, following presentation of the Applicant's case, that the Applicant has not made out a *prima facie* case.
24. The Arbitration Panel shall delete the evidence submitted by the Parties after rendering its Award.
25. Awards under this Agreement shall have the full force and effect as if the Award is a judgment rendered in a court of the jurisdiction.
26. Once a decision of the Arbitration Panel has been communicated to the parties, payment of any Award shall be made within 30 days. Any unwarranted delay on the part of a Party to comply with an Award should be reported to the Provincial Arbitration Director by the prevailing Party.
27. Provincial Arbitration Directors 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.