

# **KENTUCKY INSURANCE ARBITRATION ASSOCIATION**

## **PLAN OF OPERATION**

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# **KENTUCKY INSURANCE ARBITRATION ASSOCIATION PLAN OF OPERATION**

## **Article 1. Plan of Operation**

This Plan of Operation, hereinafter referred to as the Plan, has been promulgated pursuant to Chapter 385 of the 1974 Acts of the General Assembly (H.B. 314), hereinafter referred to as the Act, as specified in Chapter 304, Subtitle 39, of the Kentucky Revised Statutes, and shall become effective pursuant to KRS 304.39-290. The Kentucky Insurance Arbitration Association shall be known and hereinafter referred to as the Association.

## **Article 2. Board of Directors**

A. There shall be a Board of Directors consisting of ten members who are full-time employees of writers of automobile insurance in Kentucky.

1. All members of the Board of Directors shall serve for staggered terms of three years.
2. Each member of the Board of Directors shall designate qualified persons who are employed by his/her company in claims administration and who are licensed adjusters in the Commonwealth of Kentucky, who, upon approval of the Insurance Commissioner, Kentucky Department of Insurance, may serve as his/her alternate at any time for the purpose of claims arbitration as specified in Article 5. The number of Alternates designated by each member shall be determined by the needs of the Association.
3. Any member of the Board may designate an alternate representative to serve from time to time in place and instead of the actual selected representative. Such alternate shall be a licensed adjuster in the Commonwealth of Kentucky. Any member designating an alternate shall so notify the Chairman, the Secretary of the Board and the Insurance Commissioner, Kentucky Department of Insurance.
4. At each annual meeting, the Board of Directors shall elect a Chairman from among its members and such other officers, as it deems necessary. The Board shall promptly notify the Insurance Commissioner, Kentucky Department of Insurance of all newly elected directors and officers, the designated alternates specified in subsection (3) hereof, and shall request his written approval of such Board and Alternates.

5. If the Board members present at any meeting fail to act on any matter, except issues in an actual arbitration proceeding pursuant to Article 5, the Insurance Commissioner, Kentucky Department of Insurance shall be empowered to decide the issue causing the deadlock.
6. The Board shall meet annually to report to the Insurance Commissioner, Kentucky Department of Insurance and participating members of the Association. Such meetings will be held at the office of the Kentucky Insurance Arbitration Association at such time and location as directed. (Call the Association Office to confirm the time and place of the meeting.) At each Annual meeting the Board shall:
  - a. Review the Plan and proposed amendments, if any.
  - b. Review, consider, and act on any other matters deemed by it to be necessary and proper for the administration of the Association.
  - c. Review the Association's financial condition, consider funds received and receivable from membership and arbitration fees, expenses incurred, each member's equitable share of the cost to provide compensation to reparations obligors for the actual cost of travel and time by their employees in performing duties for the Association and develop plans to fund a budget for the ensuing years projected needs.
7. When a vacancy occurs on the Board of Directors due to death or resignation, the remaining members of the Board, acting at a regular or special meeting, may fill the vacancy for the remainder of the unexpired term, subject to the approval of the Insurance Commissioner, Kentucky Department of Insurance.

### **Article 3. Membership**

- A. Insurance companies and self insurers, which are admitted and approved as of July 1, 1975 to provide the kinds of insurance required by Chapter 304, Subtitle 39 of the Kentucky Revised Statutes, shall be members of the Association. Each Insurer and self-insurer approved by the Insurance Commissioner, Kentucky Department of Insurance after July 1, 1975, shall automatically become members of this Association.
- B. Other persons, associations, organizations and agencies of government may by written application and upon approval of the Board and the Insurance Commissioner, Kentucky Department of Insurance become members of this Association.

- C. Each member of the Association shall pay an initial membership fee of ten dollars (\$10.00). Thereafter each member shall pay its part of the annual cost of administering the Association, which the Board may establish as each member's fair and equitable share of the cost.
- D. There will be an annual meeting of the membership to receive a report of the Association's activities during the preceding calendar year.

#### **Article 4. Operations**

- A. The official address of the Board shall be PO Box 436509, Louisville, Kentucky, 40243
- B. The Board may employ or contract with one or more persons, firms or corporations to perform such administrative functions as are necessary for the Board's performance of its duties. Such persons shall keep such records of their activities as may be required by the Board.
- C. A claim may be submitted to arbitration not later than two (2) years after the last basic reparation payment made by any reparation obligor, or two (2) years after the settlement of the last bodily injury claim arising out of the same accident; or if there is no settlement, two (2) years after the expiration of the statute of limitations of the last bodily injury claim arising out of the same accident, whichever later occurs.
- D. For the purpose of resolving inter-company (membership) disputes arising from subrogation rights as specified in but not limited to KRS 304.39-070, the Board endorsed the principles of voluntary arbitration sponsored by Arbitration Forums Inc., 3820 Northdale Blvd. Suite 200A, Tampa Fl. 33624 subject to any such voluntary arbitration held there under being in compliance with the rules and procedures regarding licensed arbitrators, arbitration filings, hearing and evidence and decisions included in the Association's Plan of Operations and Rules.
- E. In order that there be fair allocation of significant losses, while at the same time eliminating the unnecessary costs in the handling and shifting of insignificant losses, no member shall make application for or be entitled to receive, and no arbitration award shall be made for damages paid or payable by the member reparations obligor for the first \$1,000 in the aggregate of loss so paid arising from a single occurrence without regard to the number of persons to whom basic or added reparations benefits were paid or payable.
- F. When there are companion claims or suits arising out of the same accident from which the controversy arose, arbitration may be stayed, a decision modified on the issue of fault and damage or invalidated in part or in total as provided herein.

1. By providing reasonable proof to the prevailing member and the Insurance Commissioner, Kentucky Department of Insurance, a member shall be relieved of paying damages awarded by an Arbitration Panel to the extent that its financial resources available for payment of its policyholders' liabilities, to natural persons and signatory members, is determined to be inadequate to cover its policyholders' liabilities.
  2. The Insurance Commissioner, Kentucky Department of Insurance shall determine, if the members cannot agree, the extent to which an award shall be modified in order to protect a member with multiple occurrence liabilities from paying more in the aggregate than the extent of its liability coverage.
- G. An Association member must make a good faith attempt to settle a controversy by negotiations prior to application for arbitration.
1. Notwithstanding the provisions of Section D, of this Article, nothing contained in the Plan shall be construed to prevent members from entering into formal agreement to:
    - (a) Mutually honor subrogation claims for any amount when fault has been determined or is reasonable determinable, or
    - (b) Waive all rights to subrogation as respects such members.
  2. An applicant shall attach to its application a certification or other evidence of having requested reimbursement at least 60 days prior to such application and that such request has been ignored or denied.

## **Article 5. Arbitration**

- A. A member of the Association may apply to the Association for arbitration of a controversy involving other members. A member may also apply to the Association for arbitration of a controversy existing with a non-member who so consents to Arbitration.
- B. Arbitration of controversies between insurers including self-insurers who are members of the Association and who are also signatories to the principles of arbitration as prescribed in the rules, procedure and agreements sponsored by Arbitration Forums Inc., may have the forum as the arbitration remedy available to such signatory members.
  1. Every member of the Association shall be extended an opportunity by the Insurance Commissioner, Kentucky Department of Insurance to become a

signatory member to the Arbitration Agreement sponsored by the Committee on Insurance Arbitration for Kentucky Automobile Accident Reparations.

2. Arbitration of controversies between members of the Association who, collectively, are not signatory members may be submitted with the common consent of all controverting insurers.
  3. Any member of the Association who makes application for arbitration and any Respondent who agrees to arbitration under this article shall be deemed to have consented to be bound by the decision of the arbitration panel. A decision of an Arbitrator or Arbitration Panel is final and binding with no right of rehearing or appeal.
- C. An application for submission to arbitration shall conform to the rules of arbitration as established or amended from time to time by the Board of Directors of the Association and approved by the Insurance Commissioner, Kentucky Department of Insurance. The Association shall furnish every member of the Association a copy of such rules or procedure and any amendments thereto.

## **Article 6. Indemnification**

- A. All persons described in KRS 304.39-290, except the Insurance Commissioner, Kentucky Department of Insurance and his representatives, shall be indemnified by the Association against all expenses incurred in the defense of any action, suit, or proceeding brought against such person on account of any action taken by him/her in the performance of his/her powers and duties under KRS 304.39-290, unless such person shall be finally adjudged to have committed a breach of duty involving gross negligence, bad faith, dishonesty, willful misfeasance or reckless disregard of the responsibilities of his office. In the event of settlement before final adjudication, such indemnity shall be provided only if the Association is advised by independent counsel that such person did not, in counsel's opinion, commit such a breach of duty.
- B. This Article is intended to operate as a supplement and additional safeguard to, and not in place of, the immunity granted by KRS 304.39-290.

## **Article 7. Conformity to Statute**

KRS 304.39-290 as written, and as may be amended, is incorporated as part of the Plan and as such is attached hereto.