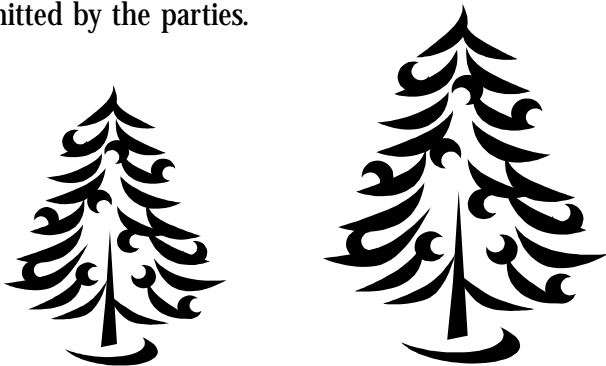


Clarification of “Chipping” Damages

The last issue of “The Panelist” contained an article titled “Chipping Damages” that requires some clarification. Specifically, one sentence read, “In order to successfully reduce an Applicant’s damages, a Respondent must inspect and write their own estimate.” This suggests that a Respondent cannot contest damages if they do not inspect the Applicant’s vehicle. This is not true. **A Respondent can contest specific damages included on the estimate even if they did not inspect the vehicle.** Examples include but are not limited to:

- Unrelated damages - if the Respondent struck the Applicant in the rear and the estimate includes front-end damages (although this could be considered a liability argument as opposed to a damages argument).
- New parts versus used or non-OE components - if the Respondent can show that used or non-OE components were available. **Tortfeasors are only liable for reasonable, necessary, and related damages.** If the Applicant’s damages do not meet these criteria, based on evidence submitted, the tortfeasor (Respondent) should not be held liable for it.
- Rental adjustments – where the length of a rental exceeds the “reasonable” standard.

Remember that as an Arbitrator, you are to decide each case individually, basing your decision on the evidence submitted by the parties.



Common Questions Asked . . .

Q: Are adjuster notes acceptable as evidence?

A: There are no formal rules of evidence in inter-company arbitration. Simply, any and all evidence that a party wishes to submit can be submitted. The question to ask is, what “weight” is the evidence given by the Arbitrator? No evidence type should be given a blanket weight. For example, I have heard some Arbitrators say, “I don’t even consider the Police Report. It’s hearsay.” The fact is, the Police Report might contain statements from the drivers or witnesses. A scene diagram may also be included. So, Police Reports should be considered. Absent a response, the information contained on a Police Report may, in itself, support the Applicant’s case. As for adjuster notes, again, do not automatically disregard them. They are as valid as a statement. The important factor is how much information is provided in the description of the adjuster notes. Detailed adjuster notes may be more effective than a bad statement. A statement may or may not have a greater level of detail.

Q: How am I to review a claim and counterclaim? Are they separate files?

A: Argument could be made that each Applicant has the burden of proof and, as such, each filing is to be considered on its own merit. Common sense, however, provides that that the two filings are the result of one motor vehicle accident. In addition, when a Respondent files a counterclaim, they often simply indicate in their response to the original application to “See contentions/file provided as Counter-Applicant.” As such, it is best if a claim and counterclaim are heard as one file. Both parties are seeking recovery of their damages from one accident. The liability of the two parties must be determined (and any damages issues resolved). As the Arbitrator, review the documentation submitted and assess liability.