Getting The Panel Paid

Collecting Arbitrator fees in reinsurance arbitration, and the draft Arbitration Panel Fee Stipulation & Order

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ROADMAP

What we will cover

01	**The collection problem**	The concern of panels potentially going unpaid
02	**The draft Stipulation**	An overview of the Committee's proposal
03	**Strengths and gaps**	What the proposal fixes, and what it leaves open
04	**Other levers**	Clause drafting, escrow, rules amendments, forum comparisons
05	**Discussion**	Where the room should push back

THE ISSUE

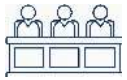
Fee collection is a process problem, not a billing problem

When a panel cannot rely on being paid, the consequences land on the arbitration itself: on its schedule, on its neutrals, and on the parties who need an award.



Proceedings stall

Organizational meetings, hearing dates, and award deadlines slip while fees are chased.



Neutrals bear the risk

Umpires and arbitrators effectively extend unsecured credit for work already performed.



Independence is strained

No neutral should be pursuing a party for payment in the middle of a case.

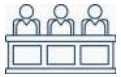
BASELINE

How panel compensation works today



The umpire

Bills the parties directly under the umpire's own fee schedule and terms. May request a retainer. Costs are typically split pro rata.



Party-appointed arbitrators

Each side's appointee bills that side. Rates and terms are set arbitrator by arbitrator, with no common schedule.



No administrator

In an ad hoc arbitration no institution holds funds, calls for deposits, or halts the case when money does not arrive.

Three separate payment relationships, three sets of terms, and no central mechanism tying payment to the arbitration's progress.

The structural gap

Administered arbitration

- An institution fixes and collects advances on costs before work begins
- Equal-share deposits are called from both sides as a rule
- The paying party may substitute for a defaulting party's share
- Non-payment can trigger suspension, withdrawal of claims, or termination

Ad hoc reinsurance arbitration

- No institution holds funds or polices the payment calendar
- Retainers depend entirely on each neutral's own terms
- Remedies for non-payment are improvised case by case
- A neutral seeking payment risks the appearance of a stake in the outcome

Where non-payment actually comes from



Financial distress

A party in runoff, under supervision, or heading into insolvency simply stops paying its share.



Strategic default

Withholding payment is used to stall a case, pressure the other side, or extract settlement leverage.



Allocation disputes

The parties disagree on who owes what, and nobody pays anything while the argument runs.



Post-hearing drift

Time spent after the hearing on the award falls outside everyone's mental budget.

Why the Committee took this up

Recruitment

Qualified neutrals think twice about serving when collection risk is part of the job.

Case economics

Chasing fees consumes panel and counsel time that should be spent on the merits.

Confidence

Repeated payment failures erode the argument that arbitration is the efficient forum.

The draft form at a glance



What it is

A sample stipulation, signed by both parties and entered as a panel order, that fixes the panel's fee arrangements at the outset of the case.



Where it fits

Alongside the other ARIAS•U.S. sample forms used at the organizational meeting stage: the scheduling order, the confidentiality agreement, the hold harmless agreement.

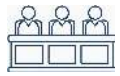


What it changes

It converts payment expectations from informal understanding into an agreed, enforceable order of the panel, with defined consequences for default.

Source: draft ARIAS•U.S. Arbitration Panel Fee Stipulation & Order circulated by the Forms & Procedures Committee.

Naming the panel, adopting the umpire's terms



Identify the panel in the order itself

The umpire and both party-appointed arbitrators are named, and each is expressly tied to the party that appointed them. There is no ambiguity later about whose invoice belongs to whom.



Adopt the umpire's own terms and conditions

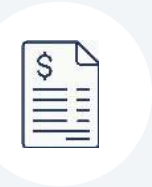
The parties agree to pay the umpire under the umpire's fee schedule, terms, and conditions, covering all reasonable and appropriate time, including work before and after the hearing.

Retainer up front, pro rata thereafter



The preliminary retainer

The umpire may bill a preliminary retainer. If the umpire requests one, payment is required, and it must be made before the organizational meeting with the panel.



Fee assessment

The umpire bills under the umpire's own fee schedule, and each party is charged its share, unless the parties agree otherwise or the underlying contracts provide otherwise.

Money is on the table before the panel does substantive work, and the billing formula is settled early.

Each side is responsible for its appointee's fees



You pay your own arbitrator

Each party is responsible for all reasonable and appropriate fees and expenses billed by its own appointed arbitrator, unless the panel orders otherwise or the contracts at issue provide otherwise.



And you are not responsible for the other party's fees

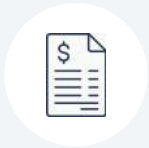
You are not responsible for the other party's arbitrator or umpire fees unless agreed otherwise. The panel's authority to award costs and fees under the contracts is expressly preserved.

Pay before the hearing

THE RULE

All panel invoices received before the hearing must be paid in advance of the arbitration hearing.

If a party has not paid



The debt survives

The non-paying party or parties remain liable for the unpaid fees.



The hearing proceeds

The other party may go forward with the arbitration hearing regardless.



On one condition

That party must make acceptable payment arrangements with the umpire and its own arbitrator.

What happens when the umpire goes unpaid?

01

Notice

The umpire informs the parties that a retainer or invoice is unpaid, so one or more of them can cover it.

02

Substitution

Any party may pay the outstanding retainer, fees, or expenses to keep the arbitration moving.

03

Recovery

On request, the panel may make a separate award for the paying party, plus interest and other relief it deems appropriate.

04

Options

If no party is willing to fund the umpire, the panel will determine whether and how to proceed.

The stipulation gives the panel something it otherwise lacks: an agreed, escalating response to non-payment.

Closing protections for the parties



Unearned money comes back

After the final award, the umpire returns any unearned balance of a retainer or payment to the paying party or parties.



Challenge rights are untouched

Nothing in the stipulation abridges or modifies either party's rights to seek to vacate or modify any order, ruling, or award of the panel.



Amendment requires everyone

The stipulation cannot be cancelled, amended, or waived without the written agreement of the parties and a majority of the panel.

What the draft fixes, and what it leaves open

What it does well

- Settles payment terms at the organizational meeting, before positions harden
- Gives the panel an express order to enforce, not just an expectation
- Creates a funded route forward through substitution and a recovery award
- Preserves party challenge rights and the panel's authority over costs

What it leaves open

- It is a stipulation, so an unwilling party can simply decline to sign
- No funds are actually secured
- Party-appointed arbitrators get responsibility language but no retainer (but they can ask for it independently)
- A recovery award is only as good as the defaulting party's ability to pay
- Remedies may punish the non-defaulting party

A wider toolkit: other options worth debating



Fix it in the clause

Address panel compensation, retainers, and default remedies in the arbitration clause itself.



Escrow the funds

Hold panel money with a third party rather than with the umpire, so no neutral is also a creditor.



Refresh the retainer

Require the retainer to be topped up at defined milestones rather than billed in arrears.



Cover the wings

Apply retainer and default mechanics to party-appointed arbitrators, not just the umpire.



Amend the rules

Build deposit and suspension machinery into the ARIAS•U.S. rules, so it applies without a signature.



Security-style orders

Borrow from pre-hearing security practice: an order for funds on deposit, entered by the panel.

Consider how other arbitration organizations address these issues. Put it in the OM agenda & Scheduling Order.

HARD CASE

The insolvency wrinkle



When a party enters runoff, rehabilitation, or liquidation mid-arbitration, no stipulation can access funds that no longer exist.

Collective proceedings cut across

Insolvency regimes pull claims into a single estate, which can suspend or complicate the arbitration entirely.

Priority of panel fees

A recovery award against an insolvent party competes with every other creditor claim in the estate.

Enforcement risk

Pressing ahead in the face of an insolvency process can put later recognition and enforcement of the award at risk.

The real answer is timing

Security is worth far more taken at the organizational meeting than sought after distress appears.

OVER TO THE ROOM

Five questions for discussion

1. Should signing a panel fee stipulation become standard at every organizational meeting?
2. Is a retainer held by the umpire good enough, or should panel funds sit in escrow?
3. Should party-appointed arbitrators sit inside the same retainer and default machinery?
4. Is suspension a real remedy, or does it just punish the party that actually paid?
5. Would this work better as a rules amendment than as an optional sample form?

Next steps



Comment on the draft

The Forms & Procedures Committee reviews suggested edits quarterly, with recommendations to the Board considered annually.



Pilot it in live matters

Use the stipulation at the organizational meeting and report back on what counsel and parties actually resist.



Decide the bigger question

Whether the durable fix is a sample form, a rules amendment, or a funds-holding mechanism.

SOURCES

Draft ARIAS•U.S. Arbitration Panel Fee Stipulation & Order · ARIAS•U.S. Forms, Rules and Practical Guide to Reinsurance Arbitration Procedure · ABA Litigation Section on failure to make required deposits