International Comparative Legal Guides

Insurance & Reinsurance 2026

A practical cross-border resource to inform legal minds

15th Edition

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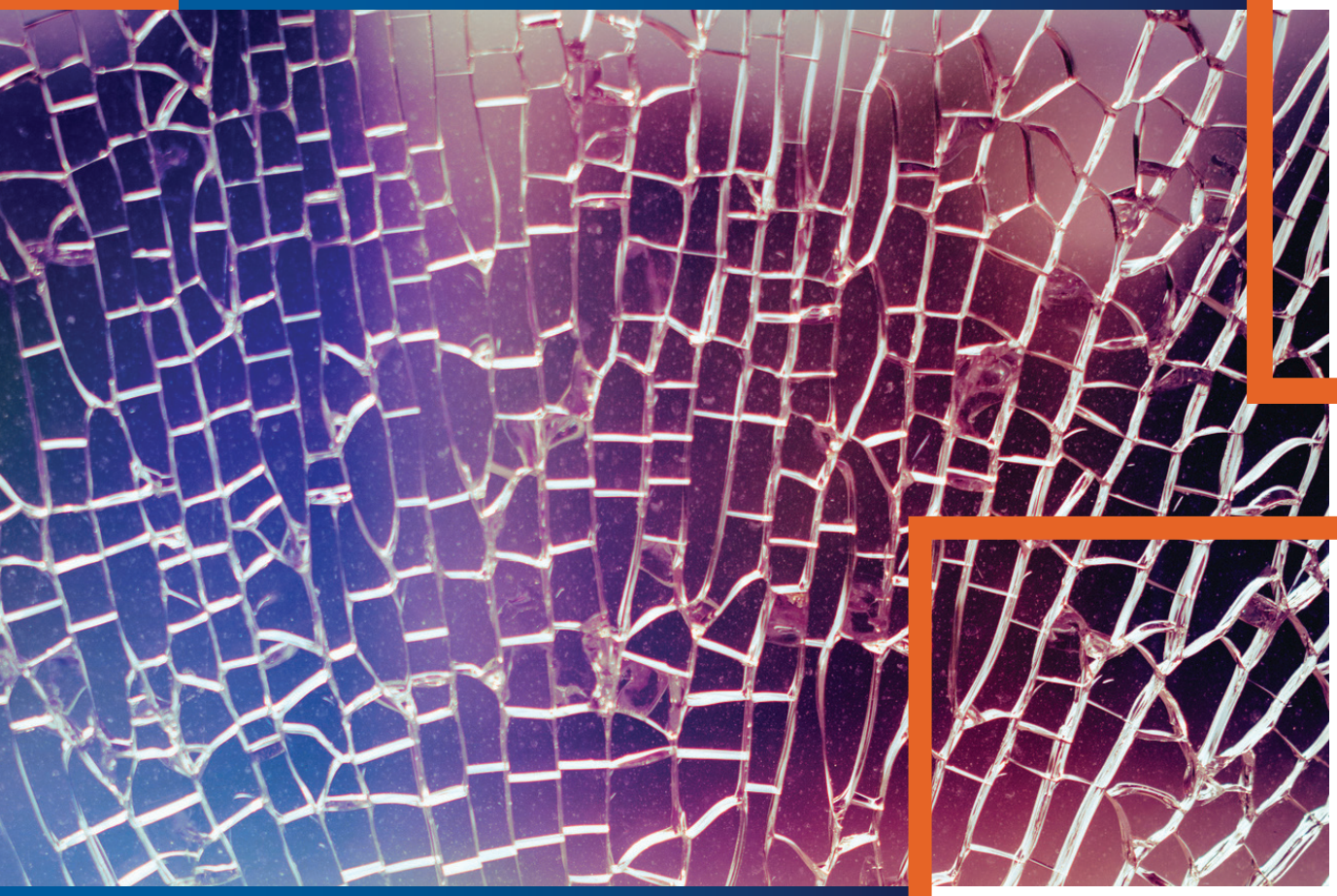

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1 Regulatory

1.1 Which government bodies/agencies regulate insurance (and reinsurance) companies?

In the United States, insurance is primarily regulated at the state level.[1] The regulatory framework varies from state to state and by line of business.[2] The McCarran–Ferguson Act of 1945 provides that the regulation of the business of insurance is to be done by the states, not the United States.[3] That said, federal agencies may still regulate insurance companies in limited areas such as financial stability or consumer protection.[4]

Reinsurance may be regulated at the state level, and if so, regulations vary from state to state.[5] State insurance departments, such as the New York Department of Financial Services, require reinsurers within their jurisdiction to meet financial and solvency requirements and maintain adequate reserves to cover obligations to ceding insurers.[6] There is no federal regulation for reinsurance, although certain federal laws, such as tax regulations or anti-money laundering rules, may apply.[7]

1.2 What are the key requirements/procedures for setting up a new insurance (or reinsurance) company?

The basic requirements for setting up a new insurance company vary by state and line of business.[8] Generally, an applicant must form a legal entity and apply for a license from the relevant state insurance regulator.[9] The application typically includes a detailed business plan, biographical information for management, audited financial statements, actuarial certifications, and evidence of minimum capital and surplus.[10] Certain policy forms and, in some cases, rates must also be filed for regulatory approval.[11] Regulators review the application to assess financial strength and solvency before granting approval.[12] Insurers must maintain statutory reserves, file financial reports, and comply with solvency and market conduct requirements.[13]

1.3 Are foreign insurers able to write business directly or must they write reinsurance of a domestic insurer?

As a general rule, foreign insurers may not write insurance business directly in the United States unless they are licensed by the relevant state insurance regulator.[14] Among other things, a foreign insurer must obtain a certificate of authority and meet the state's financial and regulatory requirements,[15] which may subject the insurer to the jurisdiction of that state's courts and regulators.[16] Writing insurance directly without state authorization is prohibited,[17] subject to certain exceptions.[18]

Foreign insurers may, however, provide reinsurance to US insurers without being licensed.[19] In that case, states regulate foreign reinsurers through accreditation or certification that focus on financial strength.[20]

1.4 Are there any legal rules that restrict the parties' freedom of contract by implying extraneous terms into (all or some) contracts of insurance?

Some state have statutes and regulations that may restrict the freedom of an insurer in what terms it may or may not include in insurance policies, but this will vary from state to state and lines of insurance.[21] Some state insurance codes may require certain policy provisions, prohibit certain specific provisions, and impose other requirements, especially for personal lines and compulsory insurance.[22] States may also require insurers to file or obtain approval for certain policy forms and rates, often through electronic systems such as NAIC's SERFF, which limits deviations from approved language.[23]

1.5 Are companies permitted to indemnify directors and officers under local company law?

As a general rule, state laws permit companies to indemnify directors and officers (D&Os) for liabilities incurred in their corporate role, subject to statutory limitations and exceptions, which vary by state.[24] Certain acts, such as fraud or wilful misconduct, cannot be indemnified.[25] Certain states follow the Model Business Corporation Act, which similarly allows indemnification and exculpation for D&Os acting properly.[26]

1.6 Are there any forms of compulsory insurance?

Whether and to what extent there must be compulsory insurance will vary from state to state and line of insurance.[27] Most states require certain types of coverage as a condition to do business in the jurisdiction.[28] In some states, certain professionals, such as lawyers and physicians, must maintain professional liability coverage as a condition of licensure.[29] Additional compulsory coverage may be imposed by statutes or regulations, including financial responsibility requirements, environmental liability insurance, or insurance required for government contractors.[30] Scope, limits, and enforcement mechanisms vary by jurisdiction and line of business.[31]

2 (Re)insurance Claims

2.1 In general terms, is the substantive law relating to insurance more favourable to insurers or insureds?

It is difficult to generalize whether substantive insurance law is more favorable to insurers or insureds, as the answer varies by jurisdiction and by the specific coverage issue. In some contexts, the law may favor the insurer, while in others it may favor the insured.

Some principles of insurance law may favor insureds. Courts may construe policy ambiguities against insurers.[32] In some – but not all – states, courts may interpret policies in accordance with the reasonable expectations of the average insured.[33] In addition, the law in certain jurisdictions may require insurers to demonstrate that they were prejudiced by late notice of an occurrence or claim.[34]

Other principles of insurance law may favor insurers. Insureds bear the initial burden of proving that a claim falls within the scope of coverage.[35] Courts interpret policy language according to the plain and ordinary meaning of the terms used.[36] In some jurisdictions, insurers are not required to show prejudice resulting from late notice.[37]

2.2 Can a third party bring a direct action against an insurer?

Generally, a third party cannot bring a direct action against a liability insurer.[38] There are, however, a number of jurisdictions which by statute permit a third-party direct action against a liability insurer.[39] On the other hand, most jurisdictions allow a claimant to bring an action against the defendant's insurer if that claimant obtained a judgment that has gone unsatisfied for a certain number of days.[40]

Whenever a third party is able to bring a direct action against the insurer, that party stands in the shoes of the insured and is subject to all rights, obligations, and defenses that would otherwise belong to the insured.[41]

2.3 Can an insured bring a direct action against a reinsurer?

As a general rule, an insured cannot bring a direct action against a reinsurer because reinsurance contracts are agreements between an insurer (the cedent) and its reinsurer.[42] Insureds lack privity with the reinsurer, and they are not a third-party beneficiary.[43]

But there may be exceptions. Sometimes, insureds and reinsurers enter into a "cut through" agreement, pursuant to which the insured can pursue claims against the reinsurer directly, something that would otherwise not be possible under the terms of the reinsurance agreement.[44]

2.4 What remedies does an insurer have in cases of either misrepresentation or non-disclosure by the insured?

Insurer remedies for misrepresentation or omission vary by state but may include rescission[45] or reformation of the policy.[46] In general, the issue is whether the insured made a material misrepresentation or omission upon which the insurer relied in issuing the policy.[47]

Under the law of certain states, to prevail on recission or reformation, the insurer must show the insured intended to make the misrepresentation or omission,[48] but under the law of other states, there may be no such requirement, and recission or reformation is permitted even if there were innocent material misrepresentations or omissions.[49] Depending on the state, the insurer may be required to prove a misrepresentation or omission with clear and convincing evidence.[50]

Finally, if the insurer prevails in seeking to rescind the policy, the policy will be deemed null and void *ab initio*,[51] and the insurer will be obligated to return the premium with interest thereon.[52]

2.5 Is there a positive duty on an insured to disclose to insurers all matters material to a risk, irrespective of whether the insurer has specifically asked about them?

As a general rule, absent a question by the insurer, an insured is under no obligation to disclose even material facts or information, but this can vary from state to state.[53] Rather, the insured is only obligated to provide true, correct, and complete responses to questions raised by the insurer.[54] However, if an insured voluntarily provides information to the insurer, such information must be correct and complete.[55]

There are, however, exceptions. For example, a marine insured has a strict duty to disclose all material facts or circumstances affecting the risk or potential loss that are known, or ought to be known, to them and not known to the insurer, even if not specifically asked.[56]

2.6 Is there an automatic right of subrogation upon payment of an indemnity by the insurer or does an insurer need a separate clause entitling subrogation?

Generally, an insurer has a right of subrogation upon payment of an indemnity, but that might vary depending on applicable law and policy language.[57] This right usually arises by law and does not depend on a policy provision, unless the policy explicitly negates it.[58] When pursuing subrogation, the insurer "steps into the shoes" of its insured, assuming all rights, obligations, and defenses that the insured would have.[59]

When multiple insurers have subrogation rights, recovery is done in a "top-down" order.[60] An insurer at the highest layer of coverage generally has the first right to recover from a responsible third party,[61] such that insurers at lower levels of coverage may not recover until higher-layer insurers are made whole.[62] This results in an orderly allocation among insurers who indemnified the insured.[63]

3 Litigation – Overview

3.1 Which courts are appropriate for commercial insurance disputes? Does this depend on the value of the dispute? Is there any right to a hearing before a jury?

It is difficult to generalize which courts are appropriate for commercial insurance disputes, as this may vary from state to state and by line of insurance. In general, commercial insurance disputes are commonly heard in state courts of general jurisdiction.[64]

Federal courts may also resolve commercial insurance disputes, provided there is subject-matter jurisdiction, such as diversity jurisdiction. Federal jurisdiction generally requires diversity of citizenship and an amount in controversy exceeding $75,000.[65]

Commercial insurance disputes are frequently resolved by courts on motions to dismiss or motions for summary judgment. Otherwise, the matter may proceed to trial, to be resolved by a jury except where appropriate by the court.[66] Certain types of commercial insurance claims, such as rescission or reformation, can only be resolved by the court.[67]

3.2 What, if any, court fees are payable in order to commence a commercial insurance dispute?

It is difficult to generalize what court fees are payable to commence a commercial insurance dispute, as fees vary from state to state and may also differ among courts within the same state.[68]

In federal court, the standard filing fee is currently $405, comprising a $350 filing fee and a $55 administrative fee.[69] State court fees vary by state and court.

3.3 How long does a commercial case commonly take to bring to court once it has been initiated?

It is difficult to generalize how long a commercial insurance dispute takes to resolve from the time it is initiated. The duration of a case depends on a variety of factors, including the number of claims asserted, the complexity of the legal and factual issues, and the procedural posture of the case.

Typically, no fixed timeline exists for resolution unless imposed by the court through scheduling orders or other case-management directives. Commercial insurance disputes may resolve in a matter of months or may take several years.

4 Litigation – Procedure

4.1 What powers do the courts have to order the disclosure/discovery and inspection of documents in respect of (a) parties to the action, and (b) non-parties to the action?

State courts generally have broad authority to order disclosure, discovery, and inspection of documents with respect to *parties*. Provided they have jurisdiction, state courts have authority to order disclosure, discovery, and inspection of documents from *non-parties*. Generally, discovery is permitted if relevant or will lead to the discovery of relevant evidence.

Federal courts have broad authority to order *parties* to provide discovery.[70] Subject to having jurisdiction, a federal court has authority to order *non-parties* to provide discovery.[71] Generally, discovery is permitted if relevant or will lead to the discovery of relevant evidence.

4.2 Can a party withhold from disclosure documents (a) relating to advice given by lawyers, or (b) prepared in contemplation of litigation, or (c) produced in the course of settlement negotiations/attempts?

As a general rule, *parties* and *non-parties* may withhold documents relating to advice given by lawyers based on the attorney-client privilege, which is recognized in both state and federal courts.[72] However, the privilege can be waived. [73]

Parties and *non-parties* may also withhold documents prepared in contemplation of litigation under the work-product doctrine.[74]

In addition, *parties* and *non-parties* may generally withhold settlement-related documents, subject to certain exceptions.[75]

4.3 Do the courts have powers to require witnesses to give evidence either before or at the final hearing?

Provided there is jurisdiction over the witness, a court has authority to require a witness of a party to give evidence before and/or at a final hearing or trial. However, there will be differences between state and federal courts with respect to the extent to which they have jurisdiction over a *non-party* witness.[76]

There may be limitations on the extent to which a court can order a witness to give evidence, including, without limitation:

1. Whether it is subject to a privilege or confidentiality. A court may not compel testimony protected by recognized privileges under state law, including attorney-client, work-product and other privileges.
2. Courts also will not order disclosure of confidential sensitive information such as trade secrets or personal data without adequate protections that such testimony will continue to be confidential.
3. A court will not order a witness to provide irrelevant testimony.

4.4 Is evidence from witnesses allowed even if they are not present?

It is difficult to generalize whether a court will allow a witness to testify if not present before the court and the jury. Depending on the court, a witness may be allowed to testify remotely such that the court and the jury can see the witness testify even though the witness is not physically present.[77] Often times when a witness cannot appear in person, parties may rely on deposition testimony, which may be presented to the jury by reading from the deposition transcript or, where permitted, by playing a video recording of the deposition. Applicable law varies with respect to whether and to what extent this is allowed.

4.5 Are there any restrictions on calling expert witnesses? Is it common to have a court-appointed expert in addition or in place of party-appointed experts?

Depending on applicable law, a party is permitted to challenge the proposed testimony of an expert.[78] Even if the expert is qualified as an expert, a court may exclude expert testimony if it does not satisfy substantive admissibility standards, otherwise known as the Daubert standards. In applying Daubert, courts assess whether the expert's opinions are relevant to the issues in dispute, whether they are based on sufficient facts or data, whether the methodology employed is reliable, and whether the expert has reliably applied that methodology to the facts of the case. Expert testimony may also be excluded where it is speculative, rests on unsupported assumptions, or would not assist the trier of fact.

Although courts have the discretion to appoint their own experts, this practice is uncommon.[79] Courts typically treat court-appointed experts as an exception rather than the norm, using them sparingly to assist in complex matters or to provide neutral technical assistance, rather than to replace party-appointed experts.

4.6 What sort of interim remedies are available from the courts?

Depending on the court and applicable law, preliminary

or interim remedies may be available, including without limitation:

1. Temporary restraining orders.[80]
2. Preliminary injunctions.[81]
3. Other equitable interim remedies, including stays, protective orders, and orders compelling or limiting discovery.[82]

4.7 Is there any right of appeal from the decisions of the courts of first instance? If so, on what general grounds? How many stages of appeal are there?

It is difficult to generalize with respect to rights of appeal, grounds of appeal, and stages of appeal, because that will vary from state to state, court system to court system, and the nature of the ruling being appealed from.

Many states do not permit a party to file interlocutory appeal (an appeal before there is a final judgment) except in certain limited circumstances.[83] Even where an interlocutory appeal may be filed, it is often limited to certain specific situations.[84]

As a general rule, a party has a right to appeal from a final decision.[85] However, there are states where the appellate court has discretion not to hear the appeal.

4.8 Is interest generally recoverable in respect of claims? If so, what is the current rate?

Whether prejudgment interest is recoverable will depend on applicable law, the type of coverage provided, and the terms of the insurance policy at issue.[86] Prejudgment interest generally commences to run from the date on which the policyholder was entitled to coverage.[87] The rate of prejudgment interest will vary from state to state.[88]

4.9 What are the standard rules regarding costs? Are there any potential costs advantages in making an offer to settle prior to trial?

The general rule, known as the "American Rule," requires each litigant to bear the cost of their own attorneys' fees, even if they prevail in their lawsuit.[89] However, fee shifting may be authorized by an agreement between the parties, court rule, and/or a statute.[90] For example, a statute may provide that if the insured prevails in obtaining coverage, it is entitled to recover its attorneys' fees and expenses.[91] Also, if the insurer commences a coverage action against the insured and prevails, it may recover its attorneys' fees and expenses.[92] Similarly under New York law, an insured who prevails in a declaratory action brought by an insurance company seeking to deny a duty to defend and indemnify is allowed to recover fees expended in defending against that action.[93]

Mediating a pre-trial settlement offer may be advantageous, depending on applicable law and the facts of the particular claim. For example, it may affect whether and to what extent the plaintiff can recover prejudgment interest.[94] Whether and to what extent the plaintiff can recover its attorneys' fees and expenses may also be relevant. In some cases, a plaintiff that rejects an offer in excess of the judgment ultimately obtained at trial must bear its own and the defendant's post-offer costs.[95]

4.10 Can the courts compel the parties to mediate disputes, or engage with other forms of Alternative Dispute Resolution? If so, do they exercise such powers?

Depending on applicable law, a state or federal court may compel a party to engage in a settlement conference or mediation, including the insurers of the defendant.[96] The extent to which they may do so can vary from state to state and from court to court.[97]

Courts can impose sanctions on a party who does not comply with a court's order to settle.[98]

However, a court cannot force parties to settle.[99] For example, a California court held that a trial court may direct a defendant to be physically present and engage in settlement negotiations at a mandatory settlement conference, but it could not compel settlement.[100] In at least one case, a court declined to appoint a mediator when it determined that the local rules did not authorize the court to order mediation when one of the parties objected, it could not, pursuant to the Alternative Dispute Resolution Act, order mediation where one party objects, and its inherent power to order the parties to submit to non-binding mediation would not facilitate an expeditious end to the litigation.[101]

4.11 If a party refuses a request to mediate (or engage with other forms of Alternative Dispute Resolution), what consequences may follow?

In general, if a party fails to mediate, a court can impose various types of sanctions.[102] However, some courts have recognized that requiring unwilling parties to engage in settlement negotiations may be futile.[103]

5 Arbitration

5.1 What approach do the courts take in relation to arbitration and how far is the principle of party autonomy adopted by the courts? Are the courts able to intervene in the conduct of an arbitration? If so, on what grounds and does this happen in many cases?

The general principle throughout the United States is that arbitration is favored and to be encouraged,[104] especially if there are international arbitration agreements.[105] The policy favoring arbitration and the right to arbitrate is firmly embodied in the Federal Arbitration Act (FAA), which implemented the New York Convention.[106] International arbitration agreements are given exceptionally favorable treatment and are strictly enforced under the New York Convention and FAA.[107]

Court involvement is rare and occurs in a few exceptional cases like evident bias or jurisdictional defects. Courts are asked to enjoin or to enforce an arbitration agreement on a variety of different grounds. The general rule under the FAA is that a party is entitled to bring an action in federal court or to remove a state court action to federal court, with jurisdiction under the FAA, to enforce the arbitration agreement and to stay any litigation brought against it.[108] Conversely, a party may seek a temporary restraining order or preliminary injunction in an effort to prevent an arbitration going forward on the ground that there is no right or obligation to arbitrate.[109]

Generally, under the law of most jurisdictions, courts may not meddle with the conduct of the arbitration. That would be so contrary to the very nature and purpose of having an arbitration, which is favored.

5.2 Is it necessary for a form of words to be put into a contract of (re)insurance to ensure that an arbitration clause will be enforceable? If so, what form of words is required?

The general rule is that there is no specific language or form

of words in an insurance contract or reinsurance policy to ensure the enforceability of the arbitration clause.[110] The arbitration clause will be enforceable as long as it constitutes a valid arbitration agreement in writing, clearly recording the parties' intention to submit disputes to arbitration.[111] Contract language used to incorporate an arbitration clause into an insurance or reinsurance contract is enforceable where it clearly expresses intent to arbitrate.

It is hard to generalize what should or should not be said in an arbitration provision. At the very least, arbitration clauses should specify the parties, the arbitration rules and seat, and the number of arbitrators. The arbitration agreement could address other arbitration-related issues, such as consolidation, disinterested arbitrators, and reference to industry standards.[112]

5.3 Notwithstanding the inclusion of an express arbitration clause, is there any possibility that the courts will refuse to enforce such a clause?

The general rule, especially with international arbitration agreements, is that arbitration provisions will be enforced.[113]

Domestic arbitration agreements are not enforceable if a state anti-arbitration statute applies.[114] Arbitration agreements may become unenforceable if a party takes action that is inconsistent with arbitration.[115] Likewise, arbitration agreements are unenforceable if the dispute does not fall within the scope of the arbitration agreement.[116]

5.4 What interim forms of relief can be obtained in support of arbitration from the courts? Please give examples.

Under the FAA, a party is entitled to bring an action, even in federal court, to enforce an arbitration agreement, including to have a coverage action against it stayed.[117] Even if the insurer is sued, the insurer can still invoke the FAA to enforce the arbitration agreement and have that action stayed.[118] With international arbitration agreements, the same holds true. However, Bermuda insurers are entitled to seek an anti-suit injunction pursuant to English law, precluding the insured from pursuing a coverage action in the United States.[119]

Courts can grant interim forms of relief in support of arbitration in order to facilitate fair arbitration proceedings, such as granting anti-suit injunctions, preliminary injunctions and freezing orders to maintain the *status quo* or prevent asset dissipation (in US courts this is pursuant to the FAA or state law).[120]

For international and domestic arbitration agreements, parties can remove to federal court and seek to have the US coverage litigation pursuant to the FAA.[121] After removal, the insurer would ask the court to stay the litigation.[122]

5.5 Is the arbitral tribunal legally bound to give detailed reasons for its award? If not, can the parties agree (in the arbitration clause or subsequently) that a reasoned award is required?

It is hard to generalize whether the tribunal is bound to give detailed reasons because that may turn on the terms of the arbitration agreement and applicable law.

As a general rule, unless the arbitration agreement or applicable law requires otherwise, the arbitration panel is not required to set forth its reasoning in rendering the arbitration award.[123]

Similarly, arbitral tribunals are not always legally bound to give detailed reasons for arbitration awards unless mandated by applicable law, the contract/arbitration agreement, or arbitration institutional rules.[124] For example, arbitration agreements under the Bermuda Form require detailed reasons for arbitration awards.[125] However, a reasoned award is usually not required unless required by the arbitration agreement.[126]

Generally, the parties can agree (either in the arbitration clause itself or subsequently) to waive detailed reasons for arbitration awards or to require them. Common language included in commercial contracts is an explicit requirement like: "Award shall state reasons unless parties agree otherwise."

5.6 Is there any right of appeal to the courts from the decision of an arbitral tribunal? If so, in what circumstances does the right arise?

Subject to the terms of the arbitration agreement and applicable law, any right to challenge or appeal an arbitration award is usually limited.[127] Generally speaking, arbitration awards will be upheld unless there was fraud, corruption, procedural irregularity, or exceeding jurisdiction.[128]

However, parties may contractually agree to an appeal on questions of law, which would enable review on legal or factual errors beyond FAA statutory grounds. Absent such agreement, there are limited statutory grounds for setting aside or challenging enforcement of arbitral decisions.[129]

6 Hot Topics

6.1 In your opinion, are there any current hot topics which relate to insurance and reinsurance issues in your jurisdiction? If so, please set out briefly any which are of particular note.

The insurance and reinsurance landscape is constantly evolving. Particular areas of note are PFAS, microplastics, and climate change. The coverage issues and case law surrounding these areas are taking shape and being further developed.

Endnotes

1 *See* NAIC, *What Do State Insurance Regulators Do?* (May 13, 2025) ("State insurance regulators are the primary regulators of the insurance sector.").

2 For instance, California regulates through the California Department of Insurance, which oversees licensing, rate approvals, and solvency. *See* Cal. Ins. Code §§ 12900–12979. In contrast, New York uses the Department of Financial Services, a combined banking and insurance regulator. *See* N.Y. Ins. Law §§ 101–7903; N.Y. Fin. Serv. Law §§ 101–409.

3 *See* McCarran–Ferguson Act 15 U.S.C. § 1011 (2018) ("Congress declares that the continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of the Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States.").

4 The agencies include the Federal Insurance Office, established under Dodd–Frank, which monitors systemic risk, international insurance matters, and data gathering, and the Financial Stability Oversight Council, which can designate insurers as systemically important, leading to Federal Reserve oversight.

5 *See* NAIC, Credit for Reinsurance Model Law § 1 (2019) (stating purpose to "establish standards for allowing credit for reinsurance" and noting state adoption varies).

6 *See* Guy Carpenter, *US Credit for Reinsurance Requirements: State Regulation 1–2* (2023) (state domiciliary regulators review licensed reinsurers' financial condition and require collateral or accreditation to permit credit for reinsurance).

7 *See, e.g.*, 26 C.F.R. § 1.848-3 (2025) (establishing federal tax rules governing reinsurance agreements).

8 *See* NAIC, *State Licensing Handbook* (2020).

9 *See A Primer on State Insurer Licensure Requirements* at 1–2 (observing that insurers seeking a "certificate of authority" must file a Uniform Certificate of Authority Application with their domiciliary state and include detailed disclosures regarding corporate structure, capital, and business plan); *see also* Conn. Gen. Stat. § 38a-72(a) (requiring insurers to obtain a certificate of authority before transacting insurance in the state); Cal. Ins. Code § 700 (2026) (requiring licensing and formation of a legal entity to operate as an insurer).

10 *See, e.g.*, California requires $1–2.6 million for P&C and $2.5 million for life/disability insurers (Cal. Ins. Code §§ 700.01–700.05), while New York mandates $2 million capital and $4 million surplus for life insurers (N.Y. Ins. Law § 4202).

11 *See* NAIC, *Insurance Regulatory Filings Basics* 1–2 (2025) (noting insurers must file almost all forms – such as policies, endorsements, riders – and rate requests electronically with state regulators via SERFF).

12 *See* Booth Rand, *Insurance Regulatory Filings Basics* 1–2 (Aug. 2025).

13 *See, e.g.*, NAIC, Annual Financial Reporting Model Regulation (Model #205).

14 *See* 15 U.S.C. § 6701(b) ("No person shall engage in the business of insurance in a State . . . unless such person is licensed as required by the appropriate insurance regulator of such State."); *see also* N.Y. Ins. Law § 1102(a); Cal. Ins. Code § 700(a) (requiring insurers to obtain state authorization before writing insurance business).

15 *See* NAIC, Uniform Certificate of Authority Application ("A risk-bearing entity . . . to obtain or amend a certificate of authority . . . .").

16 These requirements are reflected in state insurance codes and NAIC model laws commonly adopted by the states, including the NAIC Insurer Licensing Model Act and the NAIC Credit for Reinsurance Model Law.

17 *See* NAIC, *Company Licensing Best Practices Handbook* (foreign insurers must obtain a certificate of authority to write direct insurance).

18 *See* 15 U.S.C. §§ 8201–08 (Nonadmitted and Reinsurance Reform Act) (permitting surplus lines insurers to write nonadmitted coverage through licensed surplus lines brokers); 15 U.S.C. §§ 3901–02 (Liability Risk Retention Act) (allowing Risk Retention Groups to provide liability insurance nationwide after being chartered in one state).

19 *See* 15 U.S.C. § 8221 (allowing US cedents to take credit for reinsurance from foreign reinsurers if domiciliary state is NAIC-accredited, without those reinsurers needing primary-insurer licenses in every state); *see, e.g.*, New York Ins. L. § 1301(a)(14) & 11 N.Y.C.R.R. § 125.5 (foreign life insurers may become accredited reinsurers in New York without a certificate of authority to write primary insurance).

20 *See* NAIC, Credit for Reinsurance Model Law § 1(A)–(B) (2019) (permitting credit for reinsurance only if the foreign reinsurer is licensed, accredited, or certified in the ceding insurer's domiciliary state, or posts full collateral); *see also* Credit for Reinsurance – Certified Reinsurers (explaining that, under NAIC's 2011 model revisions, state insurance commissioners may certify foreign reinsurers that meet financial and regulatory benchmarks, allowing reduced collateral requirements); 15 U.S.C. §§ 8201–08 (Nonadmitted and Reinsurance Reform Act) (permitting foreign reinsurers to participate without primary licensure).

21 *See* NAIC, Uniform Individual Accident and Sickness Policy Provisions Law § 4 (requiring standard provisions such as grace periods, notice of claim, proof of loss, payment of claims, and incontestability); *see also* LegalClarity, *What Are the Mandatory Uniform Policy Provisions?* (listing required provisions including grace periods, time limits on defenses, reinstatement, and notice/proof of loss); Wilson Elser Moskowitz Edelman & Dicker LLP, *Required Language in Coverage Letters – A 50-State Survey* (Apr. 3, 2023) (surveying state statutes that mandate notice requirements in claim denial letters and other consumer-protection language).

22 *See, e.g.*, N.Y. Ins. Law § 3420(a) (requiring certain provisions in fire insurance policies and prohibiting unfair exclusions); Cal. Ins. Code § 676 (requiring specific notice periods for policy cancellations).

23 *See* NAIC, SERFF, https://www.serff.com (explaining SERFF as the standard platform for insurers to submit policy forms and rate filings for regulatory review and approval); *see also* NAMIC, Insurance Rate, Rule, and Form Regulation (noting most states mandate prior approval or filing of forms and rates through SERFF).

24 *See, e.g.*, Del. Code Ann. Tit. 8, § 145(a)–(b) (2025) (allowing corporations to indemnify D&Os for legal expenses, judgments, and settlements if they acted in good faith and in the corporation's best interests, with mandatory indemnification if the person prevails in defense); *see also* Model Bus. Corp. Act § 8.53(b) (2024) (permitting indemnification unless it would be unlawful or against public policy).

25 *See, e.g.*, Cal. Corp. Code § 317(b)–(c) (2025) (authorizing indemnification only if the agent "acted in good faith and in a manner which the person reasonably believed to be in the best interests of the corporation," and requiring that indemnity does not cover acts "not in good faith" or involving "willful misconduct").

26 *See* Model Business Corporation Act § 8.51(a) (AM. BAR ASS'N 2020) (provides for indemnification of directors for expenses and liabilities incurred in the lawful performance of their duties, subject to limitations such as breaches of loyalty or fraud).

27 NAIC, *State Insurance Charts*, https://content.naic.org/model-laws/state-insurance-charts (showing that each state adopts different model laws and charts coverage requirements by line, such as life, health, property, casualty – confirming that regulatory frameworks differ across states and lines of insurance).

28 The most common example is automobile liability insurance, required in nearly all states for vehicle operation (*see* N.Y. Veh. & Traf. Law § 312 (McKinney 2025)). Workers' compensation insurance is mandatory for most employers, with limited exemptions (*see* Cal. Lab. Code § 3700 (West 2025)).

29 *See* Or. State Bar R. 1.4 (2025).

30 *See* Fed. Acq. Reg. § 28.301 (2025) (mandating that government contractors "shall carry insurance . . . for the perils to which the contractor is exposed," with specifics varying by contract type and line of insurance involved).

31 McCarran–Ferguson Act, 15 U.S.C. §§ 1011–1015 (delegating insurance regulation to the states, creating diverse enforcement mechanisms and requirements by line of business).

32 *See, e.g.*, *Hercules, Inc. v. AIU Ins. Co.*, 784 A.2d 481, 492 n.30 (Del. 2001) ("Under the doctrine of *contra preferentum* the ambiguity would be construed against the insurers.").

33 *See, e.g.*, *J.P. Morgan Sec. Inc. v. Vigilant Ins. Co.*, 37 N.Y.3d 552, 561, 162 N.Y.S.3d 851, 855 (N.Y. 2021) ("[W]e look to the specific

language used in the relevant policies, which 'must be interpreted according to common speech and consistent with the reasonable expectation of the average insured'.").

34 *See Prince George's Cnty. v. Local Gov't Ins. Trust*, 388 Md. 162, 879 A.2d 81, 94 n. 9 (Md. Ct. App. 2005) (counting 38 states that use the notice-prejudice rule).

35 *See, e.g., S.T. Hudson Eng'rs Inc. v. Pennsylvania Nat. Mut. Cas. Co.*, 388 N.J. Super. 592, 603 (N.J. App. Div. 2006) (insured bears initial burden of proof to demonstrate that its claim falls under the policy).

36 *See, e.g., State Farm Fire & Cas. Co. v. Ham & Rye, L.L.C.*, 142 Wash. App. 6, 13, 174 P.3d 1175, 1178 (Wash. Ct. App. 2007) ("If a policy leaves a term undefined, we give the term its plain, ordinary, and popular meaning; we may use a standard English dictionary definition as an aid.").

37 *See, e.g., AIG Centennial Ins. Co. v. Fraley-Landers*, 450 F.3d 761, 767 (8th Cir. 2006) ("Arkansas law does not require any showing of prejudice to the insurer when the insured fails to give the insurer notice of loss, and the giving of notice was made a condition precedent to coverage.").

38 *See* 7A Jordan R. Plitt *et al.*, *Couch on Insurance*, § 104:2 (3d ed. Dec. 2025 update) ("in the absence of a contractual provision or a statute or ordinance to the contrary, at common law, the absence of privity of contract between the claimant and the insurer bars a direct action by the claimant").

39 At least seven jurisdictions allow third parties to sue liability insurers directly. *See* Ark. § 23-79-210 ("insurer shall be directly . . . to the extent of the coverage in the liability insurance policy, and the plaintiff may proceed directly against the insurer"); Ga. § 40-1-112 (allowed against insurers of motor carriers); Kan. § 66-1128 (allowed against insurers of public motor carriers); La. § 22:1269 ("right of direct action shall exist whether or not the policy . . . was written or delivered in the state"); *Ferguson v. Mississippi Farm Bureau Cas. Ins. Co.*, 147 So.3d 374, 378 (Miss. Ct. App. 2014) ("Under Mississippi law, direct actions against insurance companies by third parties are allowed 'for the purpose of seeking declaratory judgment on the question of coverage.'"); *In re Levine*, 130 F.4th 86, 89 (4th Cir. 2025) ("Under West Virginia law, an injured plaintiff . . . can bring a direct action against a liability carrier . . . where (1) there is a verdict against an insured . . . that an insurer refuses to pay or (2) a defendant's insurer has denied coverage and a plaintiff asks the court to 'determine if there is policy coverage' for the accident"); Wis. § 632.24 ("Any . . . policy of insurance covering liability to others for negligence makes the insurer liable . . . to the persons entitled to recover against the insured . . . irrespective of whether the liability is presently established or is contingent and to become fixed or certain by final judgment.").

40 *See Lang v. Hanover Ins. Co.*, 3 N.Y.3d 350, 354, 787 N.Y.S.2d 211, 214 (N.Y. 2004) (New York "Insurance Law § 3420 [] grants an injured party a right to sue the tortfeasor's insurer, but . . . the injured party must first obtain a judgment against the tortfeasor, serve the insurance company with a copy of the judgment and await payment for 30 days"); Conn. § 38a-321 ("Upon the recovery of a final judgment . . . and if such judgment is not satisfied within thirty days after the date when it was rendered.").

41 *See, e.g., Atl. Specialty Ins. Co. v. Lewis*, 341 Ga. App. 838, 841, 802 S.E.2d 844, 848 (Ga. Ct. App. 2017) ("plaintiff 'is no longer a stranger to the insurance policy but instead stands in the shoes of the insured' and can sue the defendant's insurer directly").

42 *See, e.g., California Cap. Ins. Co. v. Maiden Reinsurance N. Am., Inc.*, 472 F. Supp.3d 754, 760 (C.D. Cal. 2020) ("[r]einsurance agreements are separate and distinct from the policy agreements entered into by the insurer and its insured," and "[t]he original insured has no interest in a contract of reinsurance"); *U.S. Fid. & Guar. Co. v. S.B. Phillips Co.*, 359 F. Supp.2d 189, 198 (D. Conn. 2005) ("It is an undisputed principle of Connecticut law that a contract for reinsurance does not give rise to a right of action by the insured against the reinsurer, unless there is a specific contractual provision that recognizes such a right.").

43 *See, e.g., Three Rivers Hydroponics, LLC v. Florists' Mut. Ins. Co.*, No. 2:15-CV-00809, 2018 WL 791405, at *3 (W.D. Pa. Feb. 8, 2018), *aff'd*, No. 22-1140, 2023 WL 5554644 (3d Cir. Aug. 29, 2023) ("[T]he Reinsurance Agreement creates rights and duties between [reinsurer] and [insurer] exclusively. This is not enough to evidence an intent to benefit Plaintiff, or any of [the insurer]'s other insureds.").

44 *See, e.g., Jurupa Valley Spectrum, LLC v. Nat'l Indem. Co.*, 555 F.3d 87, 89 (2d Cir. 2009) ("New York law recognizes an exception if the reinsurance agreement contains a so-called "cut through" provision granting policyholders a direct right of action against reinsurers.").

45 *See* Brian Barnes, *Against Insurance Rescission*, 120 Yale L.J. 328, 332 (2010) ("Rescission of the insurance contract is the normal remedy for misrepresentations on an insurance application.").

46 *See* 2 Jordan R. Plitt *et al.*, *Couch on Insurance*, § 26:1 (3d ed. Dec. 2025 update) ("There must be an understanding that there is an agreement, but whether by mutual or common mistake, or mistake on one side and fraud or inequitable conduct on the other, the written contract fails to express the agreement; in which case, the policy will be corrected so as to make it conform to their real intent, and the parties will be placed as they would have stood if the mistake had not occurred.").

47 Some states require the insurer to show that it would not have issued the policy, or would have issued it on different terms, had the true facts been known. *See, e.g., John Hancock Life Ins. Co. v. Perchikov*, 553 F.Supp.2d 229, 230 (E.D.N.Y. 2008) ("the question in each case is whether the company has been induced to accept an application which it might otherwise have refused").

48 *See* 6 Jordan R. Plitt *et al.*, *Couch on Insurance*, § 84:12 (3d ed. Dec. 2025 update) ("Many authorities support the view that to constitute concealment, the withholding of information must be intentional."); *see also Am. Nat'l Ins. Co. v. Arce*, 672 S.W.3d 347, 354, 66 Tex. Sup. Ct. J. 760 (Tex. 2023) ("The requirement of intent to deceive is well settled, longstanding, and clearly articulated" in Texas case law).

49 *See* 6 Jordan R. Plitt *et al.*, *Couch on Insurance*, § 84:12 (3d ed. Dec. 2025 update) ("According to substantial other authority . . . a policy will be vitiated by the suppression of known material facts by the insured, although withheld unintentionally."); *see, e.g.*, Cal. Ins. Code § 331 ("Concealment, whether intentional or unintentional, entitles the injured party to rescind insurance.").

50 *See* 6 Jordan R. Plitt *et al.*, *Couch on Insurance*, § 84:14 (3d ed. Dec. 2025 update) ("Some jurisdictions require clear and convincing evidence that the insured knowingly failed to disclose information that was material to the risk to be insured.").

51 *See, e.g., Friedman v. Otsego Mut. Fire Ins. Co.*, 179 A.D.3d 1023, 1025, 114 N.Y.S.3d 686, 688 (N.Y. App. Div. 2020) ("based on the material misrepresentation . . . the subject policies were void ab initio").

52 *See, e.g., PHL Variable Ins. Co. v. Faye Keith Jolly Irrevocable Life Ins. Trust ex rel. Shapiro*, 460 F. App'x 899, 902 (11th Cir. 2012) (holding recession requires an insurer "to return any premiums paid under the contract, even where the insured person originally obtained the policy by fraud").

53 *See* 6 Jordan R. Plitt *et al.*, *Couch on Insurance*, § 84:6 (3d ed. Dec. 2025 update) ("insured has no duty to inform an insurer even with respect to a material factor unless the insured has been asked about it").

54 *See* 6 Jordan R. Plitt *et al.*, *Couch on Insurance*, § 84:2 (3d ed. Dec. 2025 update) ("A party applying for insurance is bound to answer truthfully all questions concerning facts material to the risk.").

55 *Id.* ("A half-truth . . . can potentially render an insurance policy void."); *see, e.g.*, *Curanovic v. New York Cent. Mut. Fire Ins. Co.*, 307 A.D.2d 435, 437, 762 N.Y.S.2d 148, 151 (N.Y. App. Div. 2003) ("Whether or not plaintiff intended to provide inaccurate statements or misrepresentations at the time he filled out the application is irrelevant, as he was bound by those answers and swore to their accuracy.").

56 *See* 7 Jordan R. Pitt *et al.*, *Couch on Insurance*, § 99:1 (3d ed. Dec. 2025 update) ("Key to the information exchange between insurer and insured in the context of marine insurance is the concept of concealment. In marine insurance, concealment is the failure to disclose any material fact or circumstance in relation to the subject matter of the contract that may increase the liability to loss, or affect the risk or obligation assumed, and which is, in fact or law, within, or which ought to be within, the knowledge of one party, and of which the other party has not actual or presumptive knowledge.").

57 *See, e.g.*, *Fed. Ins. Co. v. Arthur Andersen & Co.*, 75 N.Y.2d 366, 372, 553 N.Y.S.2d 291 (N.Y. 1990) ("These rights accrue upon payment of the loss and are based upon the principle that in equity an insurer, which has been compelled under its policy to pay a loss, ought in fairness to be reimbursed by the party which caused the loss.").

58 *See, e.g.*, *Ex parte State Farm Fire & Cas. Co.*, 764 So.2d 543, 546 (Ala. 2000) ("We recognize that, while the doctrine of subrogation is of purely equitable origin and nature, it may be modified by contract.").

59 *See, e.g.*, *Trogub v. Robinson*, 366 Ill. App. 3d 838, 842, 304 Ill. Dec. 527, 531 (Ill. App. Ct. 2006) ("Subrogation simply means substitution of one person for another; that is, one person is allowed to stand in the shoes of another and assert that person's rights.").

60 Mary Elizabeth Borja, *Rights of Insurers to Recover from Third Parties*, Am. Bar Ass'n (May 18, 2019), *available at* https://www.americanbar.org/groups/litigation/resources/newsletters/insurance-coverage/recover-from-third-parties (discussing "topdown" subrogation priority).

61 *See* 16 Jordan R. Plitt *et al.*, *Couch on Insurance*, § 223:100 (3d ed. Dec. 2025 update) ("insurer closest to the risk takes priority").

62 *See, e.g.*, *Fireman's Fund Ins. Co. v. TD Banknorth Ins. Agency, Inc.*, 309 Conn. 449, 456–57, 72 A.3d 36, 40 (Conn. 2013) ("When the amount recoverable from the responsible third party is insufficient to satisfy both the total loss sustained by the insured and the amount the insurer pays on the claim, however, this principle may lead to inequitable results. The make whole doctrine addresses this concern by restricting the enforcement of an insurer's subrogation rights until after 'the insured has been fully compensated for her injuries, that is . . . made whole.'")

63 *See, e.g.*, *Winkelmann v. Excelsior Ins. Co.*, 85 N.Y.2d 577, 581, 626 N.Y.S.2d 994 (N.Y. 1995) (this system "seeks . . . to prevent the insured from recovering twice for one harm").

64 High-value commercial cases in New York may be brought in specialized courts, such as the New York Supreme Court's Commercial Division, which have specific monetary thresholds (e.g., $500,000 in N.Y.). *See* New York Commercial Division Rules § 202.70.

65 *See* 28 U.S.C. § 1332.

66 Ordinarily, judges resolve equitable claims and juries resolve legal claims. *Perttu v. Richards*, 605 U.S. 460, 145 S. Ct. 1793 (2025).

67 *See Obermiller Const. Servs., Inc. v. Pub. Water Supply Dist. No. 5 of Cass Cnty.*, 319 S.W.3d 545 (Mo. Ct. App. 2010).

68 State court fees vary, for example, New York requires a $210 Index Number fee, with additional charges for motions, Requests for Judicial Intervention, and notes of issue. *See* N.Y. State Courts Filing Fees. Delaware Superior Court civil filing fees begin at approximately $200, with additional fees based on filing increments, trial requests, and the number of defendants. *See* Delaware Superior Court civil filing fees.

69 *See* US Court of Federal Claims Fee Schedule.

70 Courts can compel parties to produce any non-privileged matter relevant to a claim or defense and proportional to the needs of the case. Tools include Requests for Production, Interrogatories, and Requests for Admission. *See* Fed. R. Civ. P. 26–35.

71 Courts may issue subpoenas to third parties for the production or inspection of documents. *See* Fed. R. Civ. P. 45.

72 Attorney-Client Privilege: Protects confidential communications between a client and counsel made for the purpose of obtaining or providing legal advice. *See Upjohn Co. v. United States*, 449 U.S. 383 (1981).

73 The attorney-client privilege may be waived, including where a party affirmatively relies on privileged communications to advance a claim or defense (the "sword-and-shield" doctrine), or where privileged information is voluntarily disclosed to a third party. *See In re von Bulow*, 828 F.2d 94, 103 (2d Cir. 1987); *Clark v. United States*, 289 U.S. 1, 15 (1933) ("The privilege takes flight if the relation is abused."); *U.S. v. Ackert*, 169 F. 3d 136 (2d Cir. 1999); Fed. R. Evid. 502.

74 Work-Product Doctrine: Protects documents prepared in "anticipation of litigation" by or for a party or its representative. In insurance, the transition point from "ordinary business" to "anticipation of litigation" is often heavily litigated. *See Hickman v. Taylor*, 329 U.S. 495 (1947).

75 Settlement Communications: Statements or documents produced during settlement negotiations are generally inadmissible to prove liability. *See* Fed. R. Evid. 408; *see also* comparable state evidentiary rules. Some courts have recognized an exception to Rule 408 when statements are used for some puspose other than proving the validity of a claim. *See Trebor Sportswear Co. v. The Limited Stores, Inc.*, 865 F.2d 506, 510 (2d Cir. 1989).

76 In federal court, non-party witness testimony may be compelled through depositions and trial subpoenas under the Federal Rules of Civil Procedure, subject to geographic limits on subpoena power and judicial control over the manner of testimony. State courts often have more limited territorial jurisdiction over non-party witnesses and may rely on interstate discovery mechanisms to obtain out-of-state testimony.

77 Courts have discretion to permit remote testimony in certain circumstances, including where good cause or compelling circumstances are shown and appropriate safeguards are in place. *See Maryland v. Craig*, 497 U.S. 836 (1990); Fed. R. Civ. P. 43(a).

78 Courts serve a gatekeeping function with respect to expert testimony and may exclude such testimony upon motion by a party or on the court's own initiative. *See Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993); *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1990); Fed. R. Evid. 702.

79 Courts have limited authority to appoint neutral experts. Under Federal Rule of Evidence 706, a court may appoint an expert on its own motion or on a party's motion, define the expert's duties, and permit the expert to testify and be cross-examined by the parties. Court-appointed experts are intended to assist the court in understanding complex or technical issues and are not commonly used to supplant party-appointed experts.

80 Courts may issue temporary restraining orders in urgent circumstances to preserve the *status quo* and prevent immediate and irreparable harm before a full hearing can be held.

81 Courts may grant preliminary injunctions after notice and an opportunity to be heard where a party demonstrates irreparable harm, a likelihood of success on the merits, that the balance of equities favors relief, and that the injunction serves the public interest. Preliminary injunctions are designed to prevent prejudice and maintain existing conditions until final resolution.

82 Courts also possess inherent equitable authority to issue interim orders managing the litigation process, including stays of

proceedings, protective orders, and orders compelling or limiting discovery. These remedies are used to prevent undue burden, protect parties or non-parties from prejudice pending final judgment.

83 As a general matter, appellate review is limited to final judgments and interlocutory appeals are disfavored. *See, e.g.*, *Cobbledick v. United States*, 309 U.S. 323 (1940) (describing the final judgment rule and its purpose); *see also Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368 (1981) (noting the strong policy against piecemeal appeals).

84 Interlocutory appeals under 28 U.S. C. § 1292(b) are granted "sparingly and only in exceptional cases." *See, e.g.*, *In re City of Memphis*, 293 F. 3d 345, 350 (6th Cir. 2002). Where permitted, interlocutory appeals are generally limited to narrowly defined circumstances, such as orders granting or denying injunctions, rulings affecting substantial rights, and some non-final orders pursuant to the collateral order doctrine. *See Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541 (1949); *Will v. Hallock*, 546 U.S. 345 (2006).

85 In many jurisdictions, a final judgment is appealable as of right pursuant to statute of court rule governing appellate jurisdiction. *See, e.g.*, *Abney v. United States*, 431 U.S. 651, 656 (1977) (noting that final judgments are ordinarily appealable as of right). However, appellate courts have discretion to hear appeals from interlocutory orders when the district court determines, in its discretion, that the order involves a controlling question of law and immediate appeal may materially advance the ultimate termination of the litigation. 28 U.S.C. § 1292(b).

86 *Ashkenazy v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa.*, 245 A.D.2d 326, 327, 665 N.Y.S.2d 99, 100 (2d Dep't 1997) (upholding grant of summary judgment on the grounds that liability policy did not contain a provision requiring insurer to pay prejudgment interest in excess of the policy's limit of liability); *ExxonMobil Oil Corp. v. TIG Ins. Co.*, 44 F.4th 163, 179 (2d Cir. 2022) (holding that provision in ADR Endorsement of an excess insurance policy waived the parties' rights to pre-award interest beyond the Policy limit under N.Y. C.P.L.R. § 5001(a)); *New Jersey Mfrs. Ins. Co. v. Nat'l Cas. Co.*, 393 N.J. Super. 340, 344 (App. Div. 2007) ("In order to determine if a carrier is liable for the payment of prejudgment interest, even if such payment exceeds its policy's coverage limit, a trial court must find sufficient evidence showing that the carrier did not engage in good faith negotiations to settle the claim within the policy's coverage limit.").

87 *Olin Corp. v. OneBeacon Am. Ins. Co.*, 864 F.3d 130, 152 (2d Cir. 2017) (holding that in an insurance-coverage dispute, the application of the prejudgment interest statute "requires that prejudgment interest be calculated from the date the insurer becomes obligated to indemnify the insured").

88 *See, e.g.*, N.Y. CPLR § 5004 ("Interest shall be at the rate of *nine per centum per annum*, except where otherwise provided by statute . . ."); Wash. Rev. Code Ann. § 19.52.010 (specifying interest "at the rate of twelve percent per annum where no different rate is agreed to in writing between the parties"); Mass. Gen. Laws Ann. ch. 231, § 6C ("In all actions based on contractual obligations, upon a verdict, finding or order for judgment for pecuniary damages, interest shall be added by the clerk of the court to the amount of damages, at the contract rate, if established, or at the rate of *twelve per cent* per annum from the date of the breach or demand."); *Harford Cnty. v. Saks Fifth Ave. Distribution Co.*, 923 A.2d 1, 14 (Md. 2007) ("[P]re-judgment interest shall be calculated at the legal rate of six percent per annum.").

89 *See, e.g.*, *Innes v. Marzano-Lesnevich*, 224 N.J. 584, 592 (2016) ("In the field of civil litigation, New Jersey courts historically follow the "American Rule," which provides that litigants must bear the cost of their own attorneys' fees."); *Sage Sys., Inc. v. Liss*, 39 N.Y.3d 27, 29 (2022) ("Under the American Rule, a prevailing party in litigation generally may not recover attorney's fees from the losing party[.]"); *In re Delaware Pub. Schs. Litig.*, 312 A.3d 703, 715 (Del. 2024) ("Delaware follows the 'American Rule' in awarding attorneys' fees, which provides that 'a litigant must, himself, defray the cost of being represented by counsel.'").

90 *ACMAT Corp. v. Greater New York Mut. Ins. Co.*, 923 A.2d 697, 702 (Ct. 2007) ("The general rule of law known as the American rule is that attorney's fees and ordinary expenses and burdens of litigation are not allowed to the successful party absent a contractual or statutory exception. . . . This rule is generally followed throughout the country. . . . There are few exceptions. For example, a specific contractual term may provide for the recovery of attorney's fees and costs . . . or a statute may confer such rights . . . .").

91 *Este Oils Co. v. Federated Ins. Co.*, 724 N.E.2d 854, 859 (Ohio Ct. App. 1999) ("In a declaratory judgment action, the trial court has the authority under R.C. 2721.09 to assess attorney fees, which would clearly include fees expended by an insured in pursuing its right to coverage."); *Zurich Am. Ins., Co. v. Elec. Maine LLC*, No. 2:17-CV-00165-LEW, 2019 WL 5653953, at *2 (D. Me. Oct. 30, 2019) ("Maine law provides that 'natural person[s]' who prevail in a declaratory judgment action to determine an insurer's duty to defend are entitled to an award of 'costs and reasonable attorney's fees.'").

92 *See Buss v. Superior Ct.*, 939 P.2d 766, 776 (Cal. 1997) ("As to the claims that are not even potentially covered, however, the insurer may indeed seek reimbursement for defense costs. Apparently, all the decisional law considering such claims in and of themselves so assumes.").

93 *Mighty Midgets, Inc. v. Centennial Ins. Co.*, 47 N.Y.2d 12, 21 (1979) ("It is the rule in New York that such a recovery may not be had in an affirmative action brought by an assured to settle its rights . . . but only when he has been cast in a defensive posture by the legal steps an insurer takes in an effort to free itself from its policy obligations.").

94 *Boyce v. Soundview Tech. Grp., Inc.*, No. 03 CIV. 2159 (HB), 2005 WL 627780, at *3 (S.D.N.Y. Mar. 17, 2005) ("N.Y. C.P.L.R. § 3219, is an exclusive procedure that enables a party to avoid the payment of prejudgment interest only if it tenders a settlement offer with the court."); David M. Siegel & Patrick M. Connors, New York Practice § 303 (6th ed. 2024) ("CPLR 3219, entitled 'Tender,' enables a defendant against whom a contract claim is asserted to deposit in court a sum the defendant deems sufficient to satisfy the claim, thereby requiring the plaintiff to accept the sum in full settlement, or else. The or else is that if the plaintiff rejects the tender and gets no higher sum at the trial, the plaintiff forfeits interest and costs as of the time of the tender. Here the defendant concedes liability, but disputes damages.").

95 N.Y. CPLR § 3220. *See* Siegel & Connors, *supra*, fn. 9 ("Under CPLR 3220. . . it is mainly liability that the defendant disputes, although she may dispute damages as well. This offer, like the tender of CPLR 3219, is available only in contract cases, but here the defendant offers to pay a specified sum only if the plaintiff establishes liability at the trial. If the plaintiff accepts, and then wins on the liability issue at trial, the amount offered is the amount he gets. If the plaintiff rejects the offer, and then at the trial gets no greater damages than the defendant offered, the plaintiff must pay the expenses incurred by the defendant in trying damages.").

96 *Casaccio v. Curtiss*, 718 S.E.2d 506, 514 (W. Va. 2011) (holding that "the insurance carrier for an insured party is considered a party to court-ordered mediation and, thus, may be sanctioned by a trial court for its unauthorized failure to participate in said mediation through the presence of a representative who has full decision-making discretion to examine and resolve issues and make decisions in connection with the mediation").

97 The authority of a federal court to do so arises from (a) the court's local rules, (b) an applicable statute, (c) the Federal Rules of Civil Procedure, and (d) the court's inherent powers. *In re Atl. Pipe Corp.*, 304 F.3d 135, 140 (1st Cir. 2002). A court may also order mediation when there is a contractual provision requiring mediation. However, court-ordered mediation may not override a provision in a contract requiring other forms of alternative dispute resolution. *Trembath v. Meritplan Ins. Co.*, No. 809-CV-1110-T-17TGW, 2009 WL 2147112, at *1 (M.D. Fla. July 16, 2009) (granting Defendant's motion to stay litigation and compel mediation when "Homeowner's policy contains a provision making either party's demand for mediation a condition precedent to this matter being resolved through litigation[,]" and Defendant demanded mediation); *In re Vinson*, 632 S.W.3d 1, 3 (Tex. App. 2019) ("It is generally understood that the trial court may order that an insurance company's representative having full settlement authority must attend mediation.").

98 *Campagnone v. Enjoyable Pools & Spas Serv. & Repairs, Inc.*, 163 Cal. App. 4th 566, 573, 77 Cal. Rptr. 3d 551, 556 (2008), *as modified on denial of reh'g* (June 18, 2008) ("Henceforth, the failure of an insurer with "potential insurance coverage," including an excess insurer, to have a representative attend court-ordered appellate mediation in person, with full settlement authority, will result in it being sanctioned by this court for not complying with [the Local Rule].").

99 *In re A.T. Reynolds & Sons, Inc.*, 452 B.R. 374, 382 (S.D.N.Y. 2011) ("It is well-settled that a court cannot force a party to settle, nor may it invoke "pressure tactics" designed to coerce a settlement. . . . Moreover, in an analogous context, although a court may require parties to appear for a settlement conference, . . . it may not coerce a party into making an offer to settle.").

100 *Sigala v. Anaheim City Sch. Dist.*, 15 Cal. App. 4th 661, 669, 19 Cal. Rptr. 2d 38, 41 (1993) ("A trial court possesses 'the inherent power to require by policy that [defendants] be physically present at the mandatory settlement conference. A court may not compel a litigant to settle a case, but it may direct him to engage personally in settlement negotiations, provided the conditions for such negotiations are otherwise reasonable.'").

101 *In re Afr.-Am. Slave Descendants' Litig.*, 272 F. Supp. 2d 755, 760 (N.D. Ill. 2003).

102 *See Casaccio, supra*, fn. 11; *Inmuno Vital, Inc. v. Telemundo Group, Inc.*, 203 F.R.D. 561, 568 (S.D. Fla. 2001) (requiring the defendants to pay monetary sanctions of fees and costs to the plaintiff for failure to attend the mediation with full settlement authority in violation of a court order).

103 *See In re Atl. Pipe Corp.*, 304 F.3d at 144 ("The concerns articulated by these two respected courts plainly apply to mandatory mediation orders. When mediation is forced upon unwilling litigants, it stands to reason that the likelihood of settlement is diminished. Requiring parties to invest substantial amounts of time and money in mediation under such circumstances may well be inefficient.").

104 *See Moses H. Cone Memorial Hospital v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983).

105 *See Certain Underwriters at Lloyds, London v. 3131 Veterans BLVD LLC*, 136 F.4th 404 (2d Cir. 2025).

106 *See Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614 (1985); *GE Energy Power Conversion Fr. SAS, Corp. v. Outokumpu Stainless USA, LLC*, 590 U.S. 432, 140 S. Ct. 1637, 207 L.Ed.2d 1 (2020).

107 *See Foresight Energy, LLC v. Ace Am. Ins. Co.*, 663 F. Supp.3d 980, 987 (E.D. Mo. 2023); *Washington Sch. Risk Mgmt. Pool v. Am. Re-Ins. Co.*, No. C21-0874-LK, 2022 WL 2718479 (W.D. Wash. Apr. 21, 2022); *Luna Music, LLC v. Exec. Ins. Servs., Inc.*, No. CV 2020-0002, 2022 WL 1801091 (D.V.I. June 1, 2022); *Green Enterprises, LLC v. Dual Corp. Risks Ltd.*, 2021 WL 2451192 (D.P.R. June 15, 2021); *Georgetown Home Owners Ass'n, Inc. v. Certain Underwriters at Lloyd's, London*, No. CV 20-102-JWD-SDJ, 2021 WL 359735 (M.D. La. Feb. 2, 2021); *J.B. Hunt Transp., Inc. v. Steadfast Ins. Co.*, 470 F. Supp.3d 936 (W.D. Ark.), *reconsideration denied*, No. 5:20-CV-5049, 2020 WL 6219797 (W.D. Ark. Oct. 22, 2020). *See Certain Underwriters at Lloyds, London v. 3131 Veterans BLVD LLC*, 136 F.4th 404 (2d Cir. 2025); *Green Enterprises LLC v. Hiscox Syndicates Ltd. at Lloyds of London et al.*, 68 F.4th 662 (1st Cir. 2023); *CLMS Mgmt. Servs. Ltd. P'ship v. Amwins Brokerage of Georgia, LLC*, 8 F.4th 1007 (9th Cir. 2021), *cert. denied*, 142 S. Ct. 862, 211 L. Ed. 2d 569 (2022); *Rittman v. Amazon.com, Inc.*, 971 F.3d 904 (9th Cir. 2020), *cert. denied*, 141 S. Ct. 1374, 209 L. Ed. 2d 121 (2021); *McDonnel Grp., L.L.C. v. Great Lakes Ins. SE, UK Branch*, 923 F.3d 427 (5th Cir.), *as revised* (5th Cir. June 6, 2019); *ESAB Grp., Inc. v. Zurich Ins. PLC*, 685 F.3d 376 (4th Cir. 2012); *Safety Nat. Cas. Corp. v. Certain Underwriters At Lloyd's, London*, 587 F.3d 714 (5th Cir. 2009); *Acosta v. Master Maintenance and Const. Inc.*, 452 F.3d 373 (5th Cir. 2006).

108 *See Vaden v. Discover Bank*, 556 U.S. 49 (2009).

109 *See Goldman Sachs & Co. LLC v. City of Reno*, 747 F. App'x 473 (9th Cir. 2018).

110 *See Doctor's Associates, Inc. v. Casarotto*, 517 U.S. 681, 686–87 (1996); *Keebaugh v. Warner Bros. Ent. Inc.*, 100 F.4th 1005 (9th Cir. 2024).

111 *See Balen v. Holland Am. Line Inc.*, 583 F.3d 647, 654 (9th Cir. 2009); *Wallrich v. Samsung Elecs. Am., Inc.*, 106 F.4th 609 (7th Cir. 2024).

112 Qualifications of arbitrator or chair; manner of selecting chair; how the arbitration will be conducted; location of arbitration; what law applies, etc.

113 *See Moses H. Cone Memorial Hospital v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983); *Southland Corp. v. Keating*, 465 U.S. 1, 104 S. Ct. 852, 79 L.Ed.2d 1 (1984).

114 At least 12 states have statutes which prohibit the inclusion or enforcement of arbitration clauses: Arkansas; Hawaii; Kansas; Kentucky; Louisiana; Missouri; Nebraska; Oklahoma; South Carolina; South Dakota; Virginia; and Washington. *See US Anti-Arbitration Laws Applicable to Insurance Policies* by Peter A. Halprin, Haynes and Boone, LLP, and Stephen Wah, Pasich LLP, with assistance from Kayla N. Auza, with Practical Law Arbitration, https://uk.practicallaw.thomsonreuters.com/w-039-3244.

115 *See, e.g., Morgan v. Sundance, Inc.*, 596 U.S. 411, 142 S. Ct. 1708 (2022).

116 *See, e.g., Meyer v. Uber Techs., Inc.*, 868 F.3d 66 (2d Cir. 2017).

117 *See Vaden v. Discover Bank*, 556 U.S. 49 (2009); *Badgerow v. Walters*, 596 U.S. 1, 142 S. Ct. 1310 (2022).

118 *See Smith v. Spizzirri*, 601 U.S. 472, 144 S. Ct. 1173 (2024).

119 *See Aggeliki Charis Compania Maritima SA v. Pagnan SpA (The Angelic Grace)*, 1 Lloyd's Rep 87 (1995); *C v. D*, EWCA Civ 1282, UK Court of Appeal (2007).

120 *See Aggarao v. MOL Ship Mgmt. Co., Ltd.*, 675 F.3d 355 (4th Cir. 2012); *Nicosia v. Amazon.com, Inc.*, 834 F.3d 220 (2d Cir. 2016).

121 *See Aggarao v. MOL Ship Mgmt. Co., Ltd.*, 675 F.3d 355 (4th Cir. 2012).

122 *See Optum, Inc. v. Smith*, 366 F. Supp. 3d 156 (D. Mass. 2019).

123 *See United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 598 (1960); *Rain CII Carbon, LLC v. ConocoPhillips Co.*, 674 F.3d 469, 472 (5th Cir. 2012); *Leeward Construction Co. v. American University of Antigua*, 826 F.3d 634, 638 (2d Cir. 2016).

124 *See Cat Charter, LLC v. Schurtenberger*, 646 F.3d 836 (11th Cir. 2011) (confirming that arbitrators are not required to provide detailed reasons unless the parties specifically request a "reasoned award"); *Tully Constr. Co. v. Canam Steel Corp.*, 684 F. App'x 24

(2d Cir. 2017) (upholding arbitration award even though it lacked detailed reasoning, confirming that absent an express requirement in the contract or the rules, arbitrators need not provide explanations).

125 *See* English Arbitration Act 1996 § 52(4) ("The award shall contain the reasons for the award unless it is an agreed award or the parties have agreed to dispense with reasons."); Bermuda International Conciliation and Arbitration Act 1993 (Model Law) — UNCITRAL Model Law art. 31(2) (provides that an arbitration award shall state reasons unless the parties have agreed otherwise); *see also Margulead Ltd v. Exide Technologies* [2004] EWHC 1019 (Comm Ct) (explained that arbitral reasons must be intelligible and adequate, addressing the essential issues so the parties can understand why they won or lost; a bare conclusion is not enough); *Employers' Innovative Network, Ltd. Liab. Co. v. Bridgeport Bens., Inc.*, 144 F.4th 571 (4th Cir. 2025) (acknowledging the mandatory Bermuda Form arbitration framework, which is widely understood to include reasoned awards).

126 *See* English Arbitration Act 1996 § 52(4) ("The award shall contain the reasons for the award unless it is an agreed award or the parties have agreed to dispense with reasons."); *see also Rain CII Carbon, LLC v. ConocoPhillips Co.*, 674 F.3d 469, 472 (5th Cir. 2012) (holding that arbitrators are not required to issue a reasoned award unless the parties' agreement calls for one); *Smarter Tools Inc. v. Chongqing SENCI Imp. & Exp. Trade Co.*, No. 18-cv-2714 (AJN), 2019 U.S. Dist. LEXIS 50633 (S.D.N.Y. Mar. 26, 2019) (holding that when the parties specify a requirement for a "reasoned award," that requirement becomes binding; otherwise, arbitrators may issue standard awards with no explanation); Global Arbitration Review, *Challenging and Enforcing Arbitration Awards: USA*, https://globalarbitrationreview.com/insight/know-how/challenging-and-enforcing-arbitration-awards/report/usa ("A tribunal need not provide reasons for its award under U.S. federal law unless a reasoned award is required by the arbitration rules or by the parties' arbitration agreement.").

127 *See, e.g., Badgerow v. Walters*, 596 U.S. 1, 142 S. Ct. 1310, 212 L.Ed.2d 355 (2022).

128 *See* FAA § 10, which allows *vacatur* only for: corruption, fraud, or undue means, evident partiality, misconduct, arbitrators exceeding their powers.

129 *See Hall Street Associates, L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 586–89 (2008) (holding that parties may agree to additional review within the arbitral process but cannot expand judicial review beyond FAA limits); *Raymond James Financial Services, Inc. v. Fenyk*, 780 F.3d 59, 63–64 (1st Cir. 2015) (holding that judicial review of arbitration awards is extremely narrow under the FAA and cannot be expanded by agreement for court review).

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