



American Arbitration Association
Dispute Resolution Services Worldwide

COMPLEX COVERAGE NEUTRAL EVALUATION: Getting an Insurance Coverage Expert's Opinion

Practical Guidelines and Steps for Getting Started

The American Arbitration Association (AAA) is the world's leading provider of alternative dispute resolution (ADR) services. This guide outlines the Complex Coverage Neutral Evaluation (CCNE) process from case initiation through resolution, including the procedures utilized in CCNE cases.



Complex Coverage Neutral Evaluation: Getting a Coverage Expert's Assessment

Complex Coverage disputes are extremely expensive to litigate and typically marked by factual and legal uncertainty. Such high-stakes disputes often involve multiple insurers as well as interrelated issues such as trigger, scope, allocation, exhaustion and number of occurrences. Although most such cases settle eventually, resolution often is not reached until the parties have expended large sums. So there is an incentive to reach some form of resolution prior to trial.

Complex Coverage Neutral Evaluation (CCNE) can assist parties in reaching resolution sooner rather than later.

In effect, a neutral evaluation can act as a "reality check" earlier on in the dispute. Parties then can consider the strengths and weaknesses of their respective cases and negotiate with knowledge of their relative positions.

CCNE proceedings are confidential, encouraging direct communication between adversarial parties about possible claims and supporting evidence – particularly important in situations where the disputants are far apart in their views on how the law applies to the case in question or the worth of the case. In these instances, an evaluation of the dispute that seeks to determine best- and

worst-case alternatives can point the way to a negotiated agreement.

Coverage disputes are particularly well suited for neutral evaluation since they usually entail complicated technical and legal issues best considered by an expert in the field, as opposed to a judge or jury. Parties engaging in the AAA CCNE process receive access to the AAA's Complex Coverage Neutral Evaluation panel. This panel is made up of nationally recognized coverage experts, academics and former judges with coverage expertise able to offer effective evaluation of the issues in dispute.

Getting Started with Complex Coverage Neutral Evaluation

The Complex Coverage Neutral Evaluation process can be triggered by written agreement in the parties' contract or by mutual agreement if such a settlement procedure is not contemplated by their contract. Once the process has been initiated, the parties are given a list of potential neutral evaluators who

possess the required expertise to hear the dispute. The parties then mutually agree to an evaluator.

The evaluator then works with the parties to arrange an appropriate schedule for exchanging initial written statements.

Generally, an initial statement describes the substance of the dispute, the parties' views of the critical legal and factual issues, important evidence and any other information that may be useful to the evaluator. The evaluator and the parties also jointly agree to the length and extent of the initial written statements.

The Complex Coverage Neutral Evaluation Process

At the evaluation, each party presents its claims or defenses and describes the principal evidence on which its claims or defenses are based. The evaluation session is informal and the rules of evidence do not apply. There is no formal examination or cross-examination of witnesses, and the presentations and discussions are not recorded. After the evaluation session concludes, the parties may agree to participate in follow-up sessions to further facilitate settlement.

Generally, a written evaluation is rendered approximately 21 days after the evaluation concludes. However, the parties may agree to a non-written, oral evaluation. The parties can seek additional clarification of the evaluation from the evaluator. If all parties stipulate, they may proceed to discussions of settlement or utilize the evaluator as their mediator.

If the parties want to adopt Complex Coverage Neutral Evaluation as a part of their contractual dispute settlement procedure, they may insert the following Complex Coverage Neutral Evaluation clause into their insurance policy or contract in conjunction with a standard arbitration provision:

If a dispute arises out of or relates to this contract, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by Complex Coverage Neutral Evaluation administered by the American Arbitration Association under its Complex Coverage Neutral Evaluation Procedures before resorting to arbitration, litigation, or some other dispute resolution procedure.

If the parties wish the option of including the Complex Coverage Neutral Evaluation process as a part of their contractual agreement to arbitrate any potential dispute, they may use the following provision:

Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The parties to this contract agree that either party may, within ___ days after the filing of a Demand for Arbitration, demand that the parties' dispute first be submitted to a neutral evaluator pursuant to the American Arbitration Association's Complex Coverage Neutral Evaluation Procedures prior to proceeding with arbitration.

If the parties wish to utilize the services of a Complex Coverage Neutral evaluator to resolve an existing dispute that is not covered contractually, they may complete an ADR Submission Form, a copy of which can be found on www.adr.org.

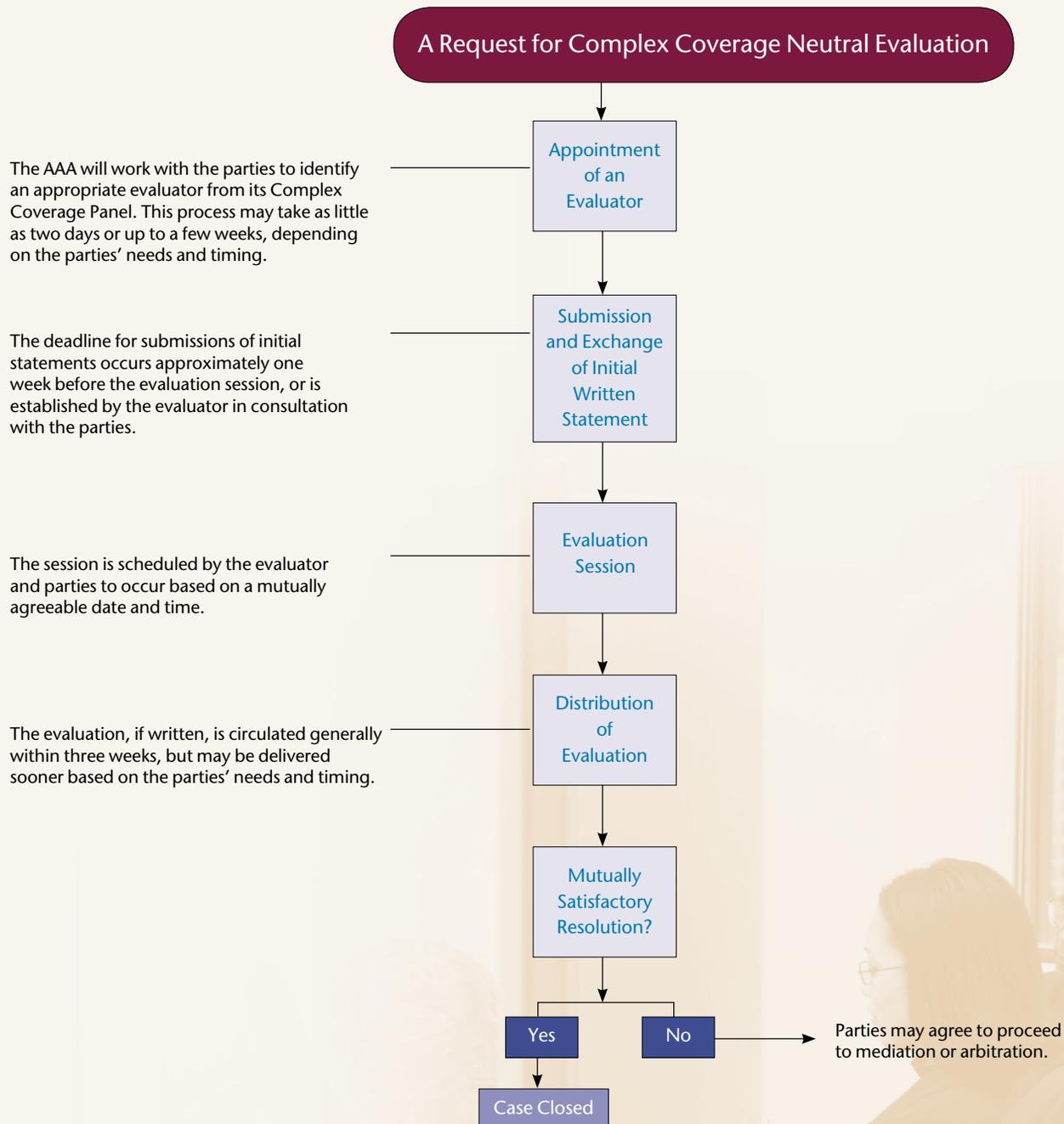
Additional Options for the Resolution of Complex Coverage Disputes

As an option or if parties to a Complex Coverage Neutral Evaluation fail to reach a mutually satisfactory resolution, they may agree to proceed to mediation or arbitration. The AAA has, for many years, offered alternative dispute resolution (ADR) services in connection with

insurance-related disputes. To manage these often complex cases, the AAA provides an experienced panel of neutrals with insurance and insurance-coverage expertise. Flexible processes are the rule, with the AAA prepared to offer whatever the parties agree to, including case

administration under our Commercial Rules as well as high-low, baseball and party-appointed protocols. If parties wish to utilize any of these services, they may complete an ADR Submission Form, a copy of which can be found on www.adr.org.

An Overview of the Complex Coverage Neutral Evaluation Process



For more information about Complex Coverage Neutral Evaluation or other insurance matters, please contact Robert Matlin, Vice President, at 312.616.6560 or by email at MatlinR@adr.org, or visit the AAA website at www.adr.org/insurance.

Complex Coverage Neutral Evaluation Procedures

CCNE-1. Initiation of Complex Coverage Neutral Evaluation

Any party may initiate a Complex Coverage Neutral Evaluation by sending the AAA the following information:

- the parties agreement to Complex Coverage Neutral Evaluation;
- the names, addresses and telephone numbers of the parties and their representatives; and
- the appropriate administrative fee.

CCNE-2. Appointment of the Evaluator

The evaluator shall be selected by mutual agreement of the parties. To facilitate the selection process, the AAA will make available to the parties a list of individuals to serve as the evaluator. Biographical information on the proposed evaluators will be provided to the parties at the same time.

CCNE-3. Qualifications of the Evaluator

No person shall serve as an evaluator in any dispute in which that person has any financial or personal interest in the result of the early neutral evaluation, except by the written consent of all parties. Prior to accepting an appointment, the prospective evaluator shall disclose any circumstance likely to create a presumption of bias or prevent a prompt meeting with the parties. Upon receipt of such information, the AAA shall either replace the evaluator or immediately communicate the information to the parties for their comments. In the event that the parties disagree as to whether the evaluator shall serve, the AAA will appoint another evaluator. The AAA is authorized to appoint another evaluator if the appointed evaluator is unable to serve promptly.

CCNE-4. Submission and Exchange of Initial Written Statements

The evaluator will work with the parties in setting forth an appropriate schedule for exchanging initial written statements and submitting those to the evaluator. The initial statement shall describe the substance of the coverage dispute, the parties' views of the key legal and factual issues, key evidence and any other information that may be useful to the evaluator. The evaluator and the parties will decide on the length and extent of the initial written statements.

CCNE-5. Evaluation Session

At the evaluation, each party will, verbally and through documents or other media, present its claims or defenses and describe the principal evidence on which they are based. The evaluation session is informal and the rules of evidence do not apply. Each party shall have in attendance throughout the evaluation session a representative with settlement authority. There is no formal examination or cross-examination of witnesses, and the presentations and discussions are not recorded. After the evaluation session concludes, the parties may agree to participate in a follow-up session if it would be productive or proceed to receive the evaluation. The evaluation session or any portion thereof may be conducted telephonically and/or via videoconference with the agreement of the parties or at the discretion of the evaluator.

CCNE-6. The Evaluation

Unless the parties agree to a non-written, oral evaluation or another timeline, a written evaluation will be rendered within 21 days after the conclusion of the evaluation. The evaluation may also be presented verbally upon the request of any party. After the receipt of the evaluation, the parties can make further inquiry about issues and points made in the evaluation.

CCNE-7. Confidentiality

The evaluator shall not divulge confidential information disclosed to an evaluator by the parties or by witnesses in the course of the Complex Coverage Neutral Evaluation. All records, reports or other documents received by an evaluator while serving in that capacity shall be confidential.

The evaluator shall not be compelled to divulge such records or to testify in regard to the Complex Coverage Neutral Evaluation in any adversary proceeding or judicial forum.

The parties shall maintain the confidentiality of the Complex Coverage Neutral Evaluation and shall not rely on or introduce as evidence in any arbitral, judicial or other proceeding:

- a) views expressed or suggestions made by another party with respect to a possible settlement of the dispute which take place during the Complex Coverage Neutral Evaluation;
- b) admissions made by another party in the course of the Complex Coverage Neutral Evaluation proceedings;
- c) proposals made or views expressed by the evaluator; or

- d) the fact that another party had or had not indicated willingness to accept a proposal for settlement made by the evaluator.

CCNE-8. Applications to Court and Limitation of Liability

- a) Neither the AAA nor any evaluator is a necessary or proper party in judicial proceedings relating to the evaluation.
- b) Neither the AAA nor any evaluator shall be liable to any party for any act or omission in connection with any evaluation conducted under this process.
- c) Parties to an evaluation under these rules shall be deemed to have consented not to commence or pursue any lawsuit, administrative proceeding or other action against the AAA or any evaluator relating to any matters under these rules. Any party commencing or pursuing such a proceeding agrees to pay and indemnify the AAA and any evaluator for all expenses and costs incurred, including attorneys fees as permitted by applicable law.

CCNE-9. Evaluator Fees and Expenses

The fees and expenses of the evaluator shall be borne equally by the parties, and each party is responsible for its own costs, including legal fees, incurred in connection with the Complex Coverage Neutral Evaluation. The parties may, however, in their written agreement alter the allocation of fees and expenses.

Administrative Fees

The nonrefundable case set-up fee is \$950.00 per party. In addition, the parties are responsible for compensating the evaluator at his or her published rate for conference and study time (hourly or per diem).

Complex Coverage Neutral Evaluation costs are generally borne equally by the parties. The parties may adjust this arrangement by agreement submitted to the AAA in writing.

Before the commencement of the Complex Coverage Neutral Evaluation, the AAA shall estimate anticipated total cost and each party shall be required to pay its portion prior to the Complex Coverage Neutral Evaluation session. When the Complex Coverage Neutral Evaluation has terminated, the AAA shall render an accounting and return any unexpended balance to the parties.