



Baseball Arbitration: Is it in your Wheelhouse?

With the approach of summer, baseball is back in season, along with homeruns, double plays, hotdogs, and the seventh inning stretch. So, what does this have to do with arbitration?

While there are many variations on the arbitration process of resolving disputes, one of the lesser known and utilized is baseball arbitration. It is the mechanism long used in salary negotiations in major league baseball – hence its name. Its use pertains to more than just baseball, salary negotiations or major league sports, and it may be an option you should consider.

How does it work? In baseball arbitration, the pre-arbitration proceedings and arbitration hearing itself are no different from any standard arbitration. However, in baseball arbitration, prior to the hearing each party submits a proposed award – a single figure - to the arbitrator. The arbitrator *must* select one of the two numbers submitted, period. There is no middle ground. This requirement creates an interesting dynamic where both parties are forced to objectively take stock of their position, and endeavor to be as reasonable as possible and able to justify their proposal.

Why use baseball arbitration? All too often, arbitrators “split the baby,” which can have a profoundly bad effect on parties who are in fact reasonable, but forced to use legal processes to recover what they are due from a contractor, a customer or other debtor. Baseball arbitration focuses the parties in on what relief they genuinely believe they are entitled to, rather than simply “playing hardball,” or “swinging for the fences,” and can accordingly increase the efficiency of the process.

How do you utilize baseball arbitration? Baseball arbitration is a creature of contract. In order to require baseball arbitration you must have an agreement with the opposing party to do so. While you could propose it after the fact, the only sure way to avail yourself of it is to incorporate it into your contractual arbitration provisions with the appropriate binding language. The American Arbitration Association, the International Centre for Dispute Resolution and independent arbitrators specifically recognize and honor baseball arbitration provisions. See, e.g., ICDR Final Offer Arbitration Supplemental Rules at www.icdr.org.

Will it reduce your recovery? No, at least not necessarily. One engaging in baseball arbitration is free to seek recovery of all their losses, but should be confident and prepared to prove entitlement to the amount to the arbitrator at the hearing. Notably a baseball arbitration clause can provide for the recovery of attorneys’ fees in addition to other damages, so that the

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arbitrator issues an interim award based on the two proposals, and then subsequently decides a request for reasonable and necessary attorneys' fees to the prevailing party.

Andrews Myers has a wealth of experience in the arbitration realm, which includes crafting of baseball arbitration provisions, and success litigating them. Our firm can help assess whether they should be in your wheelhouse.

For more information, please contact [Chuck T. Jeremiah](#).