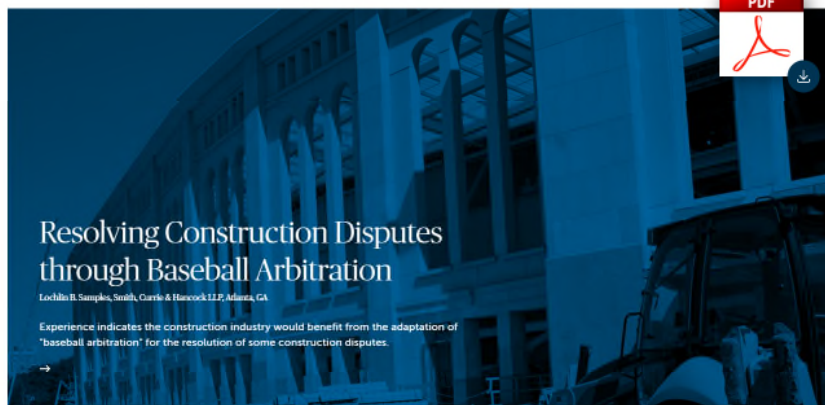


ABA Groups / Forum on Construction Law / Publications / Under Construction

# Spring 2019 - Volume 20, Number 3

Volume 20 Number 3  
March 2019

UNDER  
CONSTRUCTION



## Featured Articles

### Resolving Construction Disputes through Baseball Arbitration

Lochlan B. Samples, Smith, Currie & Hancock LLP, Atlanta, GA

Experience indicates the construction industry would benefit from the adaptation of "baseball arbitration" for the resolution

### CONSTRUCTION

### Member Spotlight: Ava J. Abramowitz

Jean M. Terry, Gordon & Rees, Louisville, KY, Division 3 (Design), Young Lawyers Division



# UNDERCONSTRUCTION

## Resolving Construction Disputes through Baseball Arbitration

Lochlin B. Samples

Professional baseball has successfully implemented a dispute-resolution procedure that has both decreased the costs of arbitration and expedited resolution of disputes. The construction industry would benefit from the incorporation and adaptation of the “baseball arbitration” procedure in construction disputes. This article is not theoretical; it is based on experience adapting baseball arbitration concepts to construction disputes.

### General Overview of Baseball Arbitration

Baseball arbitration arose as an alternative to free agency for professional baseball players. Instead of free agency, players and teams could request salary arbitration utilizing a three-member panel. Both parties would put on evidence supporting the requested salary amount, which would depend on factors such as overall team record, player performance, fan appeal, past compensation, mental or physical defects, and comparative salaries. Both parties then submit their own proposed salary numbers.

While the procedure up to the presentation of evidence is virtually identical to standard arbitration, baseball arbitration imposes strict limits on the panel’s ability to make an award. The panel is only empowered to do one of two actions: accept the player’s proposed salary or accept the team’s proposed salary. The panel is not empowered to split the baby or award a salary other than the amount requested by the player or the team. The award is final and is issued without explanation.

### Benefits of Baseball Arbitration for Construction Disputes

Utilizing the all-or-nothing approach of baseball arbitration along with the issuance of a final decision without explanation both present useful options for incorporation into the construction industry. The all-or-nothing approach—i.e., the panel is only empowered to award what the petitioner or the respondent requests—forces both parties to perform a realistic assessment of the claimed damages. By forcing the parties to examine, in detail, the claim amounts, wise parties will consider the risks and benefits of claiming certain amounts. Simply put, it rewards parties for approaching disputes with a degree of reasonableness.

By rewarding the parties for reasonable claims, while also penalizing parties for unreasonable positions, the process helps eliminate inflated or bogus claims. Today, it is far too common to see inflated claims in construction arbitration. Whether this stems from concerns over arbitrators “splitting the baby,” poor claim management, or other causes, the inflated claims and meritless assertions only serve to delay the proceedings, causing all parties to incur additional expenses that could easily be avoided through the use of reasoned claims. Although some parties will inevitably choose to continue to “swing for the fence” by asserting riskier and less supported claims, the baseball arbitration system will be more apt to reward parties that take a more

## IN THIS ISSUE

4

Member Spotlight:  
Ava. J. Abramowitz

5

The Self-Critical  
Analysis Privilege:  
Under Construction  
or Built on Shaky  
Ground?

6

Message from the  
Chair-Elect  
Three Invitations for  
the New Year

8

Annual Meeting  
Hollywood, Florida  
April 24-27, 2019

*Under Construction* (ISSN: 8756-7962) is published three times per year, by season, by the American Bar Association Forum on Construction Law, 321 North Clark Street, Chicago, Illinois 60654-7598. *Under Construction* seeks to support the Forum on Construction Law’s mission to “build the best construction lawyers” by publishing articles, columns, and reviews concerning legal developments relevant to the construction industry.

Requests for permission to reproduce or republish any material from the *Under Construction* should be sent to [copyright@americanbar.org](mailto:copyright@americanbar.org). Address corrections should be sent to [coa@americanbar.org](mailto:coa@americanbar.org).

The opinions expressed in the articles presented in *Under Construction* are those of the authors and shall not be construed to represent the policies of the American Bar Association and the Forum on Construction Law. Copyright © 2019 American Bar Association. Produced by ABA Publishing.