

## *Treaty Tips*

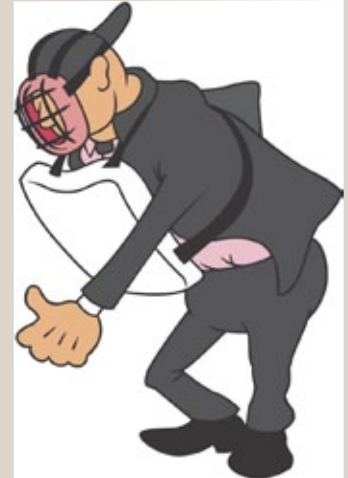
### Know Your Arbitration Clause

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After toiling to negotiate and document a reinsurance transaction, the parties may be inclined to spend less time with some of the so-called “boilerplate” provisions, such as those relating to arbitration. Failing to devote sufficient thought to material provisions like the arbitration clause, however, can come back to haunt because, as courts remind us, the parties must live with their contract.

At issue in *R.A. Wilson & Associates, Ltd. v. Certain Interest Underwriters at Lloyd’s London*, 10-2232 (USDC EDNY May 26, 2010), was a common provision for appointment of arbitrators: each party is to choose one “party arbitrator,” with the two party arbitrators then appointing a third arbitrator to serve as umpire. The governing arbitration agreement further provided that if the two party arbitrators fail to agree on the umpire, either party could apply to a specified “appointer” (in this case, the President or Vice President of the Chartered Insurance Institute) to make the appointment. After a court compelled the parties to arbitrate a dispute, each appointed their arbitrator, but those appointees did not agree on the umpire. One of the parties then moved for a preliminary injunction to stop the selection of the umpire, arguing that ambiguity existed because the agreement did not specify the process that the party arbitrators or the appointer must use when appointing the umpire.

The United States District Court for the Eastern District of New York found that the arbitration agreement clearly defined the “method” for choosing the umpire. That it did not specify the underlying process meant that the party arbitrators and, as necessary, the appointer had discretion to use their professional judgment to decide on how to choose the umpire. The court refused to “circumvent the parties designation” of the appointer or to otherwise rewrite their agreement. The motion for preliminary injunction was denied sua sponte, leaving the parties to “follow the next step in the umpire selection process [which] is clear” – the parties will submit umpire candidates to the appointer, who will have the full authority granted to it under the agreement to make the final determination.



*Court found method for choosing ump clearly defined*