



PROCESS FOR LAST-BEST OFFER ARBITRATIONS

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This memorandum provides an outline of the process used by John-Paul Boyd Arbitration Chambers for arbitrations to be resolved using the last-best offer arbitration process, also called final offer arbitrations and baseball arbitrations.

The last-best offer process provides a faster, and therefore cheaper, decision-making process than arbitrations which require the arbitrator to substantively consider evidence and argument and craft a bespoke resolution specific to the case. In this process, the parties privately exchange preliminary settlement offers before providing their last, best offers to the arbitrator. The arbitrator resolves the dispute by selecting the final offer which seems to be the most appropriate and most fair in the circumstances of the case. The arbitrator does not have the authority to adapt, adjust or combine aspects of the offers, only to choose one or the other.

PRELIMINARY OFFERS TO SETTLE

Once the discovery and disclosure process is substantially complete, the parties will prepare and exchange at least one offer to settle. These preliminary offers to settle will not be provided to the arbitrator. The offers should be clear and comprehensive, and address each issue in the case in terms capable of acceptance. Any amounts payable as retroactive support, as prospective support, or as an equalization payment should be specified rather than left to subsequent calculations.

Counsel should be thoroughly familiar with the applicable law, the tests which must be met and the evidence they will present, and be well into the hearing preparation process, before drafting their offers to settle.

1. The parties will exchange initial settlement offers at least **45 days** before the date of the hearing.

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2. The parties will exchange follow-up settlement offers, prepared considering the initial settlement proposal received from the opposing party and the content of any discussions between counsel on the merits of the parties' initial proposals, at least **30 days** before the date of the hearing. This step is optional.

FINAL OFFERS TO SETTLE

After the follow-up offers to settle have been exchanged, the parties will prepare their last, best offers to settle. The arbitrator will not read the parties' offers until the hearing has concluded.

3. The parties will provide the arbitrator with their final offers to settle at a specific time on a specific date at least **15 days** before the date of the hearing. The arbitrator will provide each party with the offer submitted by the other once both offers are received.

Please advise the arbitrator as soon as possible if an offer is accepted and the hearing becomes unnecessary.

THE HEARING

The arbitrator will resolve the dispute by selecting the final settlement offer which, in their opinion, is most appropriate and most fair in light of the applicable law and the circumstances of the case. The arbitrator will require information or evidence of some nature in order to make a rational choice between the parties' offers.

In mediation-arbitration processes, the parties may agree that the arbitrator will consider only the information and documents provided during the mediation phase in making their decision.

In arbitration and mediation-arbitration processes, the parties may agree that the arbitrator will consider only evidence and documents received at or prior to the hearing. Evidence may be provided in writing, through statements of agreed facts, admissions and affidavits, or through oral testimony. Evidence may also be provided through a combination of written and oral evidence, as might be the case if a witness's evidence in direct is provided by affidavit and the witness is later subject to oral cross-examination.

A hearing will not be necessary if the parties agree that the arbitrator will make their decision considering only written evidence or only information from the mediation phase of a mediation-arbitration process.

John-Paul Boyd Arbitration Chambers

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THE ARBITRATOR'S DECISION

The arbitrator will open and read the parties' final settlement offers once the hearing has concluded, and select the best settlement offer as soon as possible thereafter. The arbitrator's award will reproduce the terms of that offer.

Counsel may agree that the arbitrator will provide reasons for their selection, usually in summary form, or will not provide reasons for their selection. (The arbitrator will not be able to provide reasons for decisions based on information received at the mediation phase of a mediation-arbitration process.)

While decisions made without reasons will always be available more quickly than decisions which require reasons, be aware that the absence of reasons will make appeals impossible. Some parties will appreciate the resulting certainty; others will want to hedge their bets and preserve the ability to appeal an adverse outcome.