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**We look forward to seeing you soon!**

## **Must the Number of Arbitrators Selected by Each Side Be Equal?**



Imagine that you and another respondent in an arbitration have the opportunity to select two arbitrators. You then discover that the opposing five claimants may select seven arbitrators. You are outraged, but confident that no court would ever allow an arbitration to proceed which is so clearly unfair. Right? Wrong!

In fact, it may be possible for a party to find that its appointed arbitrators are outnumbered, and the court will not intervene because the parties had agreed to this possibility in the arbitration agreement.

Such a situation presented itself recently in a case arising in the U.S. Court of Appeals for the Fifth Circuit, *Soaring Wind Energy, LLC (“Soaring Wind”) v. Catic USA Inc. (“Catic”)*, 946 F. 3<sup>rd</sup> 742 (5<sup>th</sup> Cir. 2020).

The dispute arose out of an Agreement among seven “Class A Members,” which had created *Soaring Wind* as a vehicle for wind-energy marketing and project development. One of the member companies was Tang Energy (“Tang”). The Agreement further provided that each Member would “conduct activities constituting the Business [only] in and through [Soaring Wind] and its Controlled Subsidiaries.”

Eventually, Tang claimed that Catic, together with Paul Thompson (“Thompson”), one of the other class A Members, through their affiliates, had violated the agreement and demanded arbitration against both Catic and Thompson and their affiliates.

The Agreement provided that “any controversy, dispute or claim arising under or related to [the Agreement]”...shall be submitted to binding arbitration.” The Agreement further provided that each “Disputing Member” of Soaring Wind, defined as “each Member that is a party to [the] Dispute,” would then have the opportunity to name its own arbitrator. The selected arbitrators would themselves choose an additional arbitrator (or two additional arbitrators, if necessary to achieve an odd-numbered arbitration panel). **READ MORE..**

**To schedule a mediation or arbitration with Judge Gafni or any of our neutrals, please email [mcarney@adroptions.com](mailto:mcarney@adroptions.com) or click below:**

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