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LEISURE & ARTS

Legal Hardball

Play ball? Lawyers would rather settle.

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Wednesday, August 18, 2004 12:01 a.m.

NEW YORK--On the field, players in the Central Park Lawyers' Softball League use the Clincher, a softer ball than the one used in more competitive leagues. But off the field, where many CPLSL games are decided, the lawyers play hardball.

The heavy workload at Wall Street firms makes it difficult for lawyers to steal away for softball. That leaves captains scrambling for players "virtually every game," sighed Charlie Brustman, captain at Fish & Neave for the past 10 years. "People are always out of town on a deal or tied up in depositions," a problem the Yankees' Joe Torre and the Mets' Art Howe don't normally face.

Often shorthanded but ever resourceful, the lawyers have figured out a way to resolve their sporting differences without having to break a sweat, dirty their uniforms or even leave the office: They reach a negotiated settlement.

Though not the best form of exercise, lawyer softball is an efficient dispute-resolution mechanism. Consider: Two teams of 10 to 12 lawyers each, shagging flies and fielding lazy grounders for two hours, with an hour of travel time (few games are actually played in Central Park), at an average billing rate of, say, \$300 an hour, represents something like \$20,000 in forgone billables for the firms, not to mention expenses for car service and drinks after the game. A negotiated settlement allows the firms to avoid not only the costs, but also the unpredictable outcome, messiness and potential embarrassment of a public trial, er, game of softball.

Here's how it works: Under CPLSL Rules 2 and 3, teams must field at least eight players or else forfeit the game. For the nondefaulting party a forfeit is as good as a win (CPLSL Rule 21.a), while the team that forfeits faces escalating fines and possible expulsion from the league under Rule 18. The object of lawyer softball then, where both teams may be short players, is to place the other side in breach before they place you in breach--i.e., get the forfeit without letting on that you can't field a team either. In the CPLSL, having a captain who is a skilled negotiator can mean the difference between making the playoffs or not.



"I negotiate forfeits all the time," said Mr. Brustman in a game-day telephone interview. Even when shorthanded? "Absolutely. Everybody does it," he said.

As with most negotiations, the key to lawyer softball is sussing out your opponent without revealing your own number. "There's definitely a chess game that goes on between captains," said Lawrence Savell, 20 years at the helm of Chadbourne & Parke. "A lot of it is who calls whom first," he explained. "There's an obligation to tell the other side if you can't field a team, but you want to wait a bit before you do that."

Shorthanded captains can also play the weather card. "If there are clouds in the sky you may try to talk the other guy into a rain-out," Mr. Savell said. "That way, at least you can replay the game." According to Mr. Savell, firms on higher floors have the advantage because their captains can see what the weather is doing and use that against opponents.

In the hardball version of the game, phrases such as "My guys are ready to play," and "Don't make my guys travel if you're not going to show," can be used to back an opponent into a forfeit, though careful parsing of the language suggests that such phrases reveal more about the mental state of the players than their actual number.

In 35 years in the league, Mr. Brustman has developed a certain camaraderie with other long-term players and captains. "I may try to reschedule, especially if I know the captain of the other side," he said. But don't try to put one over on him: "If I get the feeling I'm being jerked around, then I want the forfeit."



On the day we spoke, Fish & Neave was scheduled to play Willkie Farr at 7 p.m. Fish & Neave had eight players firm, one on the fence: enough to play, but barely. A last-minute work assignment could mean a forfeit. It was time to play lawyer softball.

With the confidence of a 10-year captain, Mr. Brustman made the phone call. As it turned out, Willkie Farr's regular captain was away on business. The substitute captain proved no match.

"He gave me the waffle--I know he's having trouble making numbers," said Mr. Brustman. "I told him I didn't want my guys traveling all the way to 148th and Riverside if he wasn't going to show up. He's going to call back around 4:30 or 5."

At 5 p.m. the substitute captain called to say he couldn't field a team. Mr. Brustman took the forfeit. "With the permit shortage there's hardly any chance of rescheduling the game, and how do I know I'll have numbers the next time?" he explained. Fish & Neave's record climbed to 4-5, two of the wins by forfeit. With three games left, they are two forfeits away from making the playoffs.

Over at the Manhattan district attorney's office, Rob Frazer is filling in for regular softball captain Matt Bogdanos, who is in Iraq heading the investigation into the looting of Baghdad's National Museum. Substitute captain? Easy pickings for regular captains, right? Wrong. The DAs don't negotiate; they prosecute their game on the field. "I don't remember the last time we forfeited," Mr. Frazer said.



Last year's champions, and current league leaders with a 7-1 record (two wins by forfeit), the DAs are frustrated by the number of forfeits in the league. "I don't see how a firm with 800 lawyers and support staff can't put 10 people on the field," Mr. Frazer said. "We'd rather play and lose than take the forfeit."

Mr. Savell thinks other CPLSL captains are coming around to this view. "In the past, captains would go for the forfeit, to boost their record," he said. "The litigation instinct is to win. But more and more I see people who would never compromise in a litigation setting trying to reschedule games." His nonadversarial approach may help to explain Chadbourne's 0-8 record (four losses by forfeit).

"I just want to play softball," Mr. Savell said wistfully. "On a sunny late afternoon in New York it's a chance to pull on your shorts, play some ball, revisit your youth. What could be better?"

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