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Arbitrating Construction Disputes in the US

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A Practice Note explaining the steps and considerations involved in arbitrating a construction dispute in the US. This Note identifies the issues the parties should consider before arbitrating, the steps the parties should take to prepare for the arbitration, and the process for presenting claims and defenses in a construction arbitration hearing.

Construction disputes present unique challenges because they typically arise in the midst of a construction project and risk significant expense and delay of the project if the parties cannot resolve the disputes quickly. The construction industry uses several forms of alternative dispute resolution (ADR) to mitigate this risk and avoid court litigation, including:

- Mediation.
- Dispute boards.
- Arbitration.

Although construction arbitrations have some attributes of commercial arbitration, these proceedings frequently represent a distinct practice that requires the participants to understand the unique features of construction disputes. With careful planning and thought, parties and arbitrators can readily mitigate the more cumbersome features of construction arbitrations to resolve disputes in an effective and efficient manner.

This Note explains the factors for parties to consider when preparing for and conducting a construction arbitration. It outlines issues to consider when selecting an arbitrator, steps for parties to take when deciding to arbitrate, and the process for presenting claims and defenses in a construction arbitration hearing.

For general information on construction arbitration, see Practice Note, Overview: Construction Arbitration in the US. For information on drafting an arbitration provision for a construction contract, see Practice Note, Arbitration Clauses in Construction Contracts in the US: Drafting Strategies.

Pre-Arbitration Considerations

Before beginning an arbitration, a party in a construction dispute should consider several issues, including:

- Whether the parties agreed to arbitrate the dispute (see Arbitration Agreement).
- Whether there are any conditions precedent or prerequisites to arbitration (see Dispute Resolution Requirements).
- The rules governing the arbitration (see Arbitration Rules).
- The background and expertise the party wants the arbitrators to possess (see Construction Arbitrators).
- The kinds of expert witnesses the party may require (see Construction Experts).

Arbitration Agreement

Before a party starts an arbitration, it must confirm there is an agreement between the parties to arbitrate the dispute. A party's failure to ensure there is an arbitration agreement covering the dispute may delay the resolution and increase the dispute resolution costs as the parties resort to local courts and litigate threshold issues over the arbitration agreement's existence and scope. If parties wish to use arbitration to resolve a construction dispute, they must set out their agreement to arbitrate disputes arising under the construction contract in either:

- A provision of the construction contract.
- A separate arbitration agreement.

Dispute Resolution Requirements

A party considering arbitration of a construction dispute should review the construction contract to determine whether there are any conditions precedent or prerequisites to arbitration. The dispute resolution clauses in construction agreements sometimes contain escalation or step clauses that impose pre-conditions on a party's ability to start an arbitration, such as mediation or direct meetings between the principals' executives (see Practice Note, Hybrid, multi-tiered and carve-out dispute resolution clauses). Many of these contractual pre-conditions are similar to the arbitration prerequisites in other commercial agreements.

The various dispute resolution prerequisites may require the parties to incur significant time and expense before they begin an arbitration. These steps may delay the dispute resolution process and increase the overall cost of the project.

The dispute board is one type of contractual pre-requisite that is unique to the construction industry. There are various types of dispute boards the construction industry uses, including:

- Dispute resolution boards, also sometimes called dispute review boards (DRB), which parties more commonly use in the US.
- Dispute adjudication boards (DAB), dispute avoidance and adjudication boards (DAAB), and combined dispute boards (CDB), which parties more frequently use outside the US.

A dispute board is a panel of one or three independent construction experts the parties select to resolve project disputes before the dispute erupts into a claim the parties may pursue in formal arbitration or court litigation. The dispute board proceedings are less formal and time-consuming than an arbitration, and can be a useful means of resolving construction disputes. However, using a dispute board can delay the start of an arbitration if the dispute remains unresolved.

For information on using a DRB to resolve construction disputes, see Practice Note, Using a Dispute Resolution Board for Construction Contract Disputes. For more information about dispute boards for US construction disputes, see Practice Note, Dispute Resolution Mechanisms in Construction Contracts in the US.

Arbitration Rules

When deciding whether to arbitrate a construction dispute, parties should consider what rules may apply. The rules governing construction arbitrations vary, and parties may agree on the applicable rules either during a dispute or in a pre-dispute arbitration provision in their contract. The applicable arbitration rules may be, for example:

- Specific institutional construction arbitration rules.
- Specific institutional commercial arbitration rules.
- Ad hoc arbitration.

Some arbitral institutions, such as the American Arbitration Association (AAA) and JAMS, provide arbitration rules specifically for the construction industry (see, for example, the AAA Construction Industry Arbitration Rules and Mediation Procedures (AAA Construction Rules) and JAMS Construction Arbitration Rules and Procedures (JAMS Construction Rules)). Whatever rules the parties choose, most construction arbitrations typically use many of the same features as commercial or ad hoc arbitrations, such as rules or norms for the taking of evidence or exchanging disclosure (see, for example, the IBA Rules on the Taking Evidence in International Arbitration; AAA Discovery Best Practices for Construction Arbitration).

Construction Arbitrators

Before starting a construction arbitration, a party should consider the kinds of qualifications and expertise the party wants the arbitrators to possess. Depending on the applicable arbitral rules, the parties may select the arbitrators or at least provide input into the selection process.

The pool of arbitrators available for appointment to a construction arbitral panel generally consists of:

- A large group of commercial arbitrators with vast experience presiding over complex cases and some experience in the construction industry.
- A relatively smaller group of construction industry insiders with significant experience serving as arbitrators and who only seek appointments in construction arbitration matters.
- A small group of sophisticated technical experts, often engineers without legal training, with experience overseeing construction disputes as arbitrators, mediators, or dispute board members.

There are many commercial arbitrators with some limited experience working in the construction industry or serving as construction arbitrators at some point in their careers. These arbitrators are often well qualified to manage and oversee complex construction arbitrations. They may

offer procedural or substantive insights that expedite the arbitration process and help resolve the dispute. However, these arbitrators sometimes lack an understanding of construction industry practices, jargon, and features of construction law.

Conversely, there is a small group of arbitrators with extensive experience as both construction industry legal professionals and construction arbitrators. This group of arbitrators specialize in construction arbitration and seek appointments in construction arbitration matters because of their subject matter expertise in the field.

Parties to construction arbitrations also sometimes appoint technical experts to serve as arbitrators. In these instances, the technical expert's background (typically engineering or architecture) may make them uniquely qualified to understand and adjudicate a particular dispute, even though they lack legal training. Although many of these technical experts receive significant training in managing arbitration proceedings, there is a risk (or at least a perceived risk) that these arbitrators may be unqualified to decide thorny legal issues. In many cases, technical expert arbitrators are appointed as members of three-arbitrator panels.

Parties must be extra vigilant when vetting prospective industry insiders to serve as arbitrators. The construction industry is relatively small. Industry insiders may be parties on one project and arbitrators on another. Parties must take care to understand whether:

- The arbitrator candidate has any past or present connections with any of the parties, their counsel, or their experts.
- Any such connections may jeopardize the arbitrator's ability to decide the claims independently and impartially.

For more information on appointing construction arbitrators under the AAA Construction Rules and JAMS Construction Rules, see Practice Notes:

- AAA Construction Arbitration: A Step-by-Step Guide: Appointment of the Arbitrator.
- JAMS Construction Arbitration: A Step-by-Step Guide: Appointing the Arbitrator.

Construction Experts

When preparing to arbitrate a construction dispute, a party should consider the type of expert best suited to present the party's position. Construction arbitration usually involves one or more delay experts, cost experts, and technical experts.

Delay Experts

Delay experts have specialized expertise in scheduling the many phases of a construction project. Parties use delay experts to conduct forensic examinations of the project schedule to determine how or whether specific events delayed a project. They provide important expert evidence on delay and other time-related claims.

For more information on delay claims, see Practice Note, Overview: Construction Arbitration in the US: Delays and Time-Related Costs.

Cost Experts

Cost experts, sometimes also called quantum experts, are experts with specialized skill in accounting or project cost management. Parties use cost experts to quantify or validate the value of individual claims. These experts often work with delay experts to quantify:

- Time-related costs.
- Inefficiency or lost-productivity claims.

Technical Experts

Technical experts are typically specialized professionals the parties use to provide expert evidence on technical issues that arise in a construction dispute. Technical experts include, for example:

- Architects.
- Engineers, including:
  - structural engineers;
  - mechanical engineers; and
  - geotechnical engineers.

In arbitrations concerning particularly complex construction projects with multiple individual claims, parties often engage several different types of technical experts to support their respective claims or defenses.

Pre-Hearing Issues

The process for starting an arbitration depends on the rules governing the proceeding and the arbitral institution, if any, administering the case. Generally, a claimant begins the process by submitting a request or demand for arbitration, and the respondent responds by submitting an answer.

After the parties submit these pleadings but before the construction arbitration hearing begins, there are several

pre-hearing matters the arbitrators and parties should consider and address in a preliminary conference.

Statements of Claim and Statements of Defense

Many construction arbitrations are expansive proceedings involving multiple parties and claims. Detailed statements of claim and statements of defense provide a helpful roadmap of the parties' respective positions at the start of the case, usually after the parties file their respective request for arbitration and answer.

Statements of claim and statements of defense are detailed legal submissions that set out each party's claims and defenses. They are the norm in international construction arbitration and are becoming more common in US domestic construction arbitration.

In most international construction arbitration proceedings, the parties' statements of claims and defenses serve both as pleadings and memorial presentations of the parties' prima facie cases. They incorporate all of the submitting party's supporting exhibits, witness testimony, and expert reports. (See generally, Albert Bates, Jr. & R. Zachary Torres-Fowler, Internationalizing Domestic Arbitration: How International Arbitration Practices Can Improve Domestic Construction Arbitration, 74:3 Disp. R. J. 1, 8-16 (2020).)

In US domestic construction arbitration proceedings, where using statements of claim and statements of defense is increasing, the statements are usually less robust than the memorial submissions in international construction arbitrations. They typically:

- Do not attach supporting:
  - exhibits;
  - witness statements; or
  - expert reports.
- Contain less detail than memorial submissions parties use in international arbitration.

These submissions in US construction arbitrations are more akin to the pleadings in court litigation. They sometimes provide only a summary arbitration demand or answer, but the trend in recent years is to include detailed itemizations and descriptions of the facts and legal theories underlying each party's claims and defenses. This approach saves the parties time and effort because it allows each party to understand the other party's position before beginning the discovery phase of the arbitration (see Document Exchange and Depositions).

For more information on statements of claims and defenses in construction arbitrations under the AAA Construction Rules and JAMS Construction Rules, see Practice Notes:

- AAA Construction Arbitration: A Step-by-Step Guide: Commencing the Arbitration.
- JAMS Construction Arbitration: A Step-by-Step Guide: Starting the Arbitration.

Preliminary Conference

A construction arbitration preliminary conference, also sometimes called a preliminary hearing, pre-hearing conference, or case management conference, is similar to a preliminary conference in a commercial arbitration. It is the first opportunity for the parties and their counsel to meet with the arbitrators to discuss and schedule the arbitral proceedings. Because construction arbitrations frequently raise many simultaneous complex claims, the preliminary conference plays a critical role in ensuring an organized and efficient construction arbitration process.

At the preliminary conference, the parties should discuss with the arbitrators any issues concerning:

- The schedule for the remainder of the case (see Arbitration Schedule).
- Any party's need or desire for supplemental pleadings (see Statements of Claim and Statements of Defense).
- The expansion of the arbitration due to, for example:
  - joinder of other parties; or
  - consolidation of other claims.

  (See Joinder and Consolidation.)
- Procedural mechanisms for streamlining the proceedings, such as:
  - bifurcation (see Bifurcation); and
  - dispositive motions (see Dispositive Motions).
- Planning for site visits by the arbitrators and experts (see Site Visits).
- Discovery the parties may want, including:
  - document exchanges (see Document Exchange); and
  - depositions (see Depositions).

For information on the preliminary conference in construction arbitration under the AAA Construction Rules and JAMS Construction Rules, see Practice Notes:

- AAA Construction Arbitration: A Step-by-Step Guide: Preliminary Hearings and Management of Proceedings.
- JAMS Construction Arbitration: A Step-by-Step Guide: Preliminary Conference.

Arbitration Schedule

To prepare an arbitration schedule, the parties and arbitrator discuss and map out the procedural stages of the case and set dates for the hearing. A construction arbitration can span a few months to several years, depending on:

- The number of claims.
- The project's scale.
- The complexity of the issues.

Parties and arbitrators must carefully consider the available procedures that can help them:

- Advance the proceedings.
- Maintain realistic expectations over deadlines.
- Ensure that all parties are prepared to present their case at the hearing.

Joinder and Consolidation

Construction arbitrations often involve multiple claims by and among numerous parties, including:

- Owners.
- Contractors.
- Subcontractors.
- Vendors.
- Architects.
- Engineers.

(See Practice Note, Overview: Construction Arbitration in the US: Key Actors.)

Joinder of related parties and consolidation of related or parallel proceedings that involve common questions of law and fact can dramatically increase the arbitration's efficiency. Joinder and consolidation:

- Allow the various parties impacted by a dispute to present their diverse claims in a single proceeding.
- Increase the likelihood that the arbitrators receive all relevant evidence holistically and allocate liability appropriately.

Although multiparty arbitrations are inevitably more complex than bilateral arbitration proceedings, the benefits of joinder and consolidation far outweigh the risks of inconsistent outcomes from parallel litigation and arbitration proceedings.

Joinder and consolidation may be available if the parties agree or if the arbitration rules permit it, such as:

- AAA Construction Rule R-7.
- JAMS Construction Rule 6.

Parties also may use joinder and consolidation to compel a third-party to join the case. Before seeking to consolidate claims or join non-parties to the proceedings, parties must research the applicable rules because the procedures vary. For example, under:

- The AAA Construction Rules, a special arbitrator decides whether to permit a third-party's joinder (AAA Construction Rule R-7).
- The JAMS Construction Rules:
  - JAMS decides whether to consolidate two or more cases (JAMS Construction Rule 6(e)); and
  - the arbitrator decides whether to permit joinder of a third-party (JAMS Construction Rule 6(f)).

The factors that the institution or arbitrator, as applicable, weigh in deciding whether to permit joinder and consolidation include:

- Whether the same institutional arbitration rules apply to all parties' various arbitration agreements.
- The stage of the pending arbitration proceeding, particularly whether the arbitrators have been appointed.
- Whether the third-party or other parties to the arbitration would suffer prejudice by the proposed joinder or consolidation.

In proceedings where joinder or consolidation are unavailable, an intermediate actor (such as a contractor separately in privity with an owner and subcontractor) whose contracts do not all contain an arbitration provision may be at risk of prosecuting or defending against the same claim in different forums. They may also face inconsistent judgments, especially for pass-through claims.

Pass-through claims are common in construction disputes. They typically arise where a subcontractor suffers damages as a result of an owner's conduct and seeks to recover those damages by asserting a claim against the contractor. The contractor in turn passes through the subcontractor's claim by asserting it against

the owner in arbitration. Joinder of the subcontractor to an arbitration between the contractor and owner causes pass-through claims to proceed in a streamlined fashion.

However, the contractor's inability to join the subcontractor to the case may increase the contractor's potential exposure. In this situation, the contractor may seek to enter a liquidating agreement with a nonparty claimant and assert a pass-through claim in the arbitration (or litigation) in an effort to mitigate its risk. In a liquidation agreement, the contractor acknowledges liability for the claim and passes it through to the owner by asserting it in the arbitration. In exchange, the subcontractor agrees to accept whatever amount the contractor ultimately recovers from the owner for the claim in the arbitration. As a result, although the subcontractor is not a party to the arbitration, it receives the benefit of any award for its claim in the arbitration.

Bifurcation

Effectively managing a construction arbitration is challenging for the parties and arbitrators because the cases typically involve a significant number of individual claims. One way to manage the process efficiently may be to bifurcate or otherwise divide the proceedings into different tracks organized by subject matter.

For example, the arbitrators may require the parties to conduct discovery or present at the hearings by grouping together:

- Various sets of factually related claims (for example, change order claims, claims involving a specific discipline, or an owner's entitlement to liquidated damages) (see Practice Note, Overview: Construction Arbitration in the US: Common Construction Arbitration Disputes).
- Liability issues on one or more claims before addressing the amount of damages or quantum stage.

By staging the proceedings this way, the parties may be able to resolve the remaining claims on their own without the need for subsequent arbitration hearings.

Dispositive Motions

Early disposition of one or more claims or issues may be appropriate in some cases. The construction arbitration rules of several arbitral institutions expressly permit dispositive motions to narrow or dispose of claims or issues before the hearing (for example, AAA Construction Rule R-34; JAMS Construction Rule 18). Even where the applicable rules do not address dispositive motions, the parties and arbitrators should discuss whether dispositive motion practice would be useful in streamlining the proceedings and increasing efficiency.

For more information on dispositive motions in US arbitration generally, see Practice Note, Dispositive Motions in US Arbitration.

Site Visits

The parties and arbitrators should discuss the need and advisability of holding site visits, also sometimes called site inspections, especially if one of the issues involves something at the site that remains unremedied or unresolved. Site visits allow:

- The experts to gather information to formulate their opinions.
- The arbitrators to see the disputed issues up close and in the context of the whole project.

The parties should carefully consider the potential cost and delay of a site visit. They should discuss with the arbitrators and reach agreement on a basic protocol to govern the process. Some arbitral institutions provide guidance on effectively managing a site visit (see, for example, AAA Discovery Best Practices for Construction Arbitration, at 2-3).

If a physical site visit is not possible (for example, due to cost or social distancing restrictions), parties often consider arranging a virtual site visit, usually by using videoconferencing or drones. However, virtual site visits are imperfect substitutes because they do not always provide experts and arbitrators a complete perspective on the layout and scale of a particular project.

Document Exchange

Document exchange practices in construction arbitrations vary depending on whether the arbitration is an international or US domestic case.

Like international commercial arbitrations generally, most international construction arbitrations tend to have limited and specific document exchange procedures that follow the standards set out in the International Bar Association, IBA Rules on the Taking of Evidence in International Arbitration. This narrow approach permits the parties to gain access to documents that are relevant and material to disputed issues in the case without the risk of a party engaging in an unwanted fishing expedition.

Conversely, parties in US domestic construction arbitrations generally engage in broader document exchanges that

are more akin to the document production practices in US federal and state courts. However, even in the US, construction arbitrators and the institutional rules usually impose some limitations on the amount of permissible document exchange, balancing the size and complexity of the case against the cost of production (AAA Discovery Best Practices for Construction Arbitration, at 3-4).

Depositions

Like document exchanges, the use and extent of depositions in a construction arbitration depend on whether the case is an international or domestic US arbitration.

Depositions are uncommon in international arbitration proceedings. Instead, parties usually rely on the other parties' written witness statements and expert reports to understand each other's positions before the hearing.

The use of depositions is more widespread in domestic US construction arbitrations, where parties, counsel, and arbitrators are accustomed to US litigation practices. However, even in the US, institutional rules discourage parties from extensively using depositions in a construction arbitration (see generally AAA Discovery Best Practices for Construction Arbitration, at 4). For example:

- The JAMS Construction Rules do not address depositions at all.
- The AAA Construction Rules only address using depositions in large complex cases, and even then limit their availability to exceptional cases in the arbitrators' discretion (AAA Construction Rule L-4(f)).

Construction Arbitration Hearings

A construction arbitration hearing generally proceeds in the same manner as a commercial arbitration hearing. However, because construction cases typically involve many claims, parties, and issues, the hearings present unique time-management challenges to the parties and arbitrators. For this reason, practitioners have developed certain shortcuts and streamlining methods to keep the construction arbitration hearings focused and efficient.

Opening Statements

Like the hearings in a commercial arbitration, most international and domestic US construction arbitration hearings begin with the parties' opening statements. Opening statements allow the parties to quickly summarize their respective positions for the arbitrators and each other.

For efficiency, the parties and arbitrators sometimes decide to streamline the proceedings by, for example:

- Agreeing to forego formal opening statements if the parties have already provided extensive prehearing briefing.
- Using presentation aids such as PowerPoint to summarize a large amount of information in a visual and meaningful way.

Witness Statements or Oral Direct Testimony

As in court proceedings, parties present their evidence using witnesses. The witnesses in arbitration hearings may provide evidence in the form of either:

- Live oral testimony.
- Written witness statements.

In international arbitrations, parties most often present their evidence using written witness statements, which the parties exchange before the hearing. Any other party may then ask the arbitrators to require the proffering party to present the witness in person for cross-examination or questioning by the arbitrators during the hearing. (IBA Rules, Art. 4.) As a result, unlike domestic US construction arbitrations, international construction arbitrations usually involve no live direct testimony. In some cases, however, international arbitrators permit a party to conduct a very brief direct examination to allow the witness to introduce themselves, explain their role in the dispute, and address any issues that the witness may not have previously had the opportunity to address in the witness statement.

Using written witness statements enables the parties to better understand each other's position, which crystalizes the core issues in dispute before the hearing. Some practitioners believe using witness statements leads to a far more efficient and cost-effective arbitration hearing (see V.V. Veeder, Introduction, in Arbitration and Oral Evidence 7, 7-8 (2005)).

In US domestic construction arbitrations, some arbitrators and practitioners prefer to use written witness statements because it is an efficient method. However, most parties in US domestic construction arbitrations present witnesses to testify in person during the hearing. Many US practitioners believe that live oral direct testimony is more compelling than written witness statements and outweighs the benefits of written statements' increased efficiency.

Order of Presentation

Like US courtroom procedures, US domestic construction arbitration practices typically divide the case presentation by party, where the claimant (similar to a plaintiff) presents its case first, followed by the respondent (similar to a defendant). In most US construction arbitration hearings, the claimant presents all of its fact witnesses and expert witnesses before the respondent.

International construction arbitration practice, like international commercial arbitration practice, usually organizes the hearing by the witness type. Specifically, each party presents its fact witnesses, followed by each party's expert witnesses. In a typical international arbitration:

- The claimant presents all of its fact witnesses.
- The respondent then presents all of its fact witnesses.
- The claimant then presents all of its expert witnesses.
- The presentation concludes with the respondent presenting all of its expert witnesses.

(IBA Rules, Art. 8.4.)

In construction arbitrations with multiple simultaneous claims, fact and expert evidence can involve numerous issues and witnesses. Grouping competing fact witnesses and expert witnesses respectively provides helpful efficiencies in these cases. For example, this order of presentation collapses the time between two competing witnesses on a specific topic, increasing the likelihood that:

- The testimony of both witnesses remains fresh in the arbitrators' minds.
- The arbitrators can appreciate the distinctions between the two witnesses' positions.

Streamlining Methods

Construction arbitration hearings often involve one or more features that parties and arbitrators may use to streamline the proceedings.

Issue Lists

An issue list identifies the dispositive issues in the case. The parties jointly prepare it. Some practitioners use these lists in both international and US domestic construction arbitration hearings because they help streamline the proceedings by enabling the arbitrators to:

- Focus on the core issues in the case.
- Digest the relevant information involving numerous claims.

Other practitioners do not use issue lists because they believe the parties may find it difficult to agree on the dispositive issues. This difficulty may lead to either:

- Further acrimony between the parties.
- The final issue list being so diluted that it is unhelpful to the arbitrators.

Chess Clock

Although not unique to construction arbitrations, using a chess clock to manage time has become more common in international and US domestic arbitration proceedings. When using a chess clock, each party has a set amount of hearing time for the entire duration of the hearing. Each party can use that time to present their case as they deem necessary, but they may not exceed the total allocated to them.

Using a chess clock may increase the efficiency of a large complex arbitration hearing because it:

- Requires the parties to focus their efforts on the most important elements of their case.
- Ensures that the parties complete the presentation of their cases within the allotted timeframe.

Witness Conferencing

Witness conferencing (also sometimes called hot tubbing) has become a relatively common practice in international construction arbitration proceedings and to some extent in US domestic construction arbitration. Witness conferencing involves the simultaneous appearance and examination of two witnesses at the hearing, most often experts opining on the same subject matter (see, for example, Chartered Institute of Arbitrators, Guidelines for Witness Conferencing in International Arbitration (Apr. 2019)). The witness-experts usually sit next to one another and field questions from the arbitrators and parties. Because the witness-experts appear at the same time:

- The arbitrators and parties are better able to draw out the distinctions between the competing testimony.
- The witness-experts can respond to each other's positions in real time.

Joint Expert Reports

Practitioners in international construction arbitrations frequently have their respective experts jointly prepare expert reports. The parties' meet and confer, often outside the presence of counsel, to:

- Reach agreement on particular premises underlying their opinions.
- Identify the key areas of dispute.

The experts then document those agreements and disagreements in a joint report for the arbitrators' review.

Arbitrators find these reports helpful because they usually force the experts to crystalize the key points of disagreement. In construction arbitrations involving a large number of experts, having the parties' experts prepare joint expert reports can often help the arbitrators cull down the amount of information they must process to render a decision.

Scott Schedules

Scott schedules have become particularly helpful tools for arbitrators in complex construction arbitration proceedings because they organize a large volume of information in a handy and readable format. Scott schedules are tables that the parties can unilaterally or jointly prepare that provide the arbitrators with:

- A high-level summary of each party's position.
- The amount in controversy.
- The location of the supporting evidence and testimony.

The parties need not necessarily agree about the contents of a jointly prepared Scott schedule. They may create a joint schedule where each party identifies the requested information about its own claims and defenses.

In some cases, parties use Scott schedules as part of their post-hearing submission. In this situation, each party prepares its own Scott schedule to:

- Summarize the information it presented during the hearing.
- Provide the arbitrators with a reference guide to the exhibits and hearing transcripts that support the party's position.

Post-Hearing Submissions and Closing Arguments

Parties in construction arbitrations often conclude the proceedings with either post-hearing submissions or closing arguments. Post-hearing submissions can be time-consuming and costly to prepare. They often involve two rounds of submissions, consisting of:

- Opening submissions by each party.
- Answering submissions by each party responding to the other parties' submissions.

Where time is of the essence or the cost of preparing post-hearing submissions is too high, parties sometimes opt to present live closing arguments to conclude the proceedings. The arbitrators usually schedule these arguments several weeks after the close of the arbitration hearing. This allows the parties sufficient time to review and organize the evidence as they prepare an oral presentation summarizing the case.