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Defending a Construction Arbitration

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A Practice Note outlining key procedural and strategic considerations for a party defending a construction arbitration. This Note addresses the crucial initial steps a respondent should take on receiving a demand for arbitration, including reviewing the arbitration agreement for potential jurisdictional challenges and assessing the procedural framework established by the relevant institutional rules, such as those of the American Arbitration Association (AAA), JAMS, the International Chamber of Commerce (ICC), or the International Centre for Dispute Resolution (ICDR). It explores important tactical decisions, such as whether to file a detailed answering statement, assert counterclaims, or seek joinder of third parties or consolidation with other proceedings. This Note also provides guidance on developing defenses, managing pre-hearing procedures like disclosure and dispositive motions, and evaluating the use of expedited arbitration. It examines various hearing strategies designed to streamline proceedings and effectively present a defense, including the use of a chess clock, witness conferencing (hot tubbing), and different approaches to expert testimony.

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