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Third Party Discovery Subpoenas in Arbitration Proceedings Under State Law: A Fifty State Survey

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Traditionally parties who have chosen to arbitrate their disputes rather than litigate them do so for a number of reasons, but significant among those are cost and time savings. Disputes generally are resolved more quickly and with less expense in arbitration than in litigation. These time and cost efficiencies are driven largely by more limited discovery and a compressed schedule for both discovery and arbitration proceedings. However, for years, litigation-like features have been creeping into arbitration and while arbitration is generally faster than litigation, some would argue that it has become at least as expensive as litigation, in part because of the costs associated with discovery. Certainly, disputes in large, complex construction projects may necessitate (and benefit from) significant amounts of discovery, even in arbitration proceedings. Practitioners proceeding in arbitration, however, even where litigation-like discovery is being exchanged, should be aware that there remain stark differences between discovery in arbitration versus traditional litigation. One such significant difference, in some jurisdictions, is the ability of a party to subpoena discovery from third parties ahead of an arbitration hearing.

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