

Conducting an Arbitration Hearing: Defendant's Case in Chief & Evidence Issues

I. Introduction

Arbitration hearings are less formal than court trials but still require careful preparation, structured presentation, and adherence to procedural fairness. The defendant's case in chief is the opportunity to present evidence, rebut the claimant's allegations, and establish defenses.

This document outlines best practices for presenting the defendant's case in chief in arbitration, with a particular focus on evidentiary issues.

II. Overview of the Defendant's Case in Chief

The defendant's case in chief follows the claimant's presentation and typically includes:

- Opening (if not already given or if reserved)
- Presentation of witnesses
- Introduction of documentary and physical evidence
- Expert testimony (if applicable)
- Legal arguments supporting defenses

Objectives:

- Refute the claimant's claims
 - Establish affirmative defenses
 - Undermine credibility of opposing evidence
 - Provide alternative explanations of facts
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III. Pre-Hearing Preparation

A. Case Strategy

- Identify key issues in dispute
- Determine elements of each defense
- Align evidence with legal theories

B. Witness Preparation

- Prepare fact witnesses and experts
- Conduct mock examinations
- Ensure familiarity with exhibits

C. Exhibit Management

- Organize exhibits logically (chronological or thematic)
- Pre-mark exhibits as required by arbitration rules
- Exchange exhibits in advance if required

D. Stipulations

- Agree on undisputed facts where possible
 - Narrow issues for hearing efficiency
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IV. Presenting the Defendant's Case

A. Opening Statement (Optional or Reserved)

- Provide a concise roadmap of defenses
- Highlight key evidence and testimony
- Avoid argument where prohibited

B. Direct Examination of Witnesses

Key Principles:

- Use non-leading questions
- Establish foundation for testimony
- Introduce exhibits through witnesses

Structure:

1. Background and qualifications
2. Personal knowledge of facts
3. Introduction of relevant documents

4. Explanation of disputed events

C. Expert Witnesses

- Establish qualifications clearly
- Present opinions and methodology
- Address opposing expert opinions proactively

D. Use of Exhibits

- Authenticate documents (even if relaxed rules apply)
 - Demonstrate relevance and reliability
 - Use demonstratives where helpful
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V. Evidentiary Standards in Arbitration

Arbitration generally follows flexible evidentiary rules compared to courts.

A. Admissibility

- Arbitrators often admit evidence if it is:
 - Relevant
 - Material
 - Reliable

B. Relaxed Rules of Evidence

- Hearsay may be admitted
- Formal rules (e.g., strict authentication) may be relaxed

C. Weight vs. Admissibility

- Key distinction: arbitrators may admit evidence but assign it little weight
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VI. Common Evidence Issues

A. Hearsay

- Often admissible

- Challenge reliability and credibility rather than admissibility

B. Authentication

- Still important for credibility
- Use witness testimony, metadata, or circumstantial evidence

C. Relevance and Materiality

- Object to irrelevant or cumulative evidence
- Focus on issues central to the dispute

D. Privilege

- Attorney-client privilege
- Work product doctrine
- Ensure privileged materials are not inadvertently disclosed

E. Expert Evidence Challenges

- Question methodology
- Highlight bias or lack of qualifications

F. Documentary Evidence Issues

- Incomplete records
- Altered or inconsistent documents
- Lack of foundation

VII. Making and Responding to Objections

A. Approach in Arbitration

- Objections are typically less formal
- Avoid excessive interruptions
- Raise key objections strategically

B. Common Objections

- Relevance

- Lack of foundation
- Privilege
- Unreliable hearsay

C. Offers of Proof

- Explain significance of excluded evidence
 - Preserve record if necessary
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VIII. Cross-Examination of Claimant's Rebuttal Witnesses

- Focus on inconsistencies
 - Challenge credibility
 - Use prior statements and documents
 - Keep questions leading and controlled
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IX. Closing the Defendant's Case

A. Summary of Evidence

- Tie evidence to legal elements
- Reinforce key themes

B. Legal Argument

- Apply facts to governing law
- Emphasize burden of proof failures

C. Address Weaknesses

- Preempt arbitrator concerns
 - Provide explanations for unfavorable evidence
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X. Practical Tips

- Be concise and organized

- Respect arbitrator preferences and procedural orders
 - Use technology effectively (e.g., electronic exhibits)
 - Maintain professionalism and credibility
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XI. Conclusion

Successfully presenting the defendant's case in chief in arbitration requires strategic planning, effective witness examination, and careful handling of evidentiary issues. While arbitration allows flexibility, persuasive advocacy depends on clarity, organization, and credibility.

A well-prepared defense not only rebuts the claimant's case but also provides a compelling alternative narrative supported by reliable evidence.