

LETTER TO THE EDITORS

Dear Sirs

The book review by Mr Humphrey LLoyd of *FIDIC Contracts: Law and Practice* by Ellis Baker *et al.* at [2010] ICLR 386 contains remarks on page 391 relating to sub-clause 20.1 of the FIDIC Conditions that require correction, and, as they relate to a previously published article of mine ("Contractor's Claims Under the FIDIC Contracts For Major Works" (2005) 21(4) Const LJ 278), I feel I must draw them to your readers' attention.

1. Mr LLoyd states that Mr Baker *et al.* "merely refer" to my paper whereas, in fact, Mr Baker *et al.* set forth their own view (see Section 6.199, p. 316).
2. Mr LLoyd writes that, in my paper referenced by Mr Baker *et al.*, I suggested that the phrase "or otherwise in connection with the Contract" "may cover claims for misrepresentation or claims based upon certain doctrines applicable to administrative contracts". In fact, I did not set out my view on the meaning of that phrase.
3. Mr LLoyd queries: "What do the troublesome words 'or otherwise in connection with the Contract' mean?" This phrase should be familiar at least to arbitration practitioners. Reference to disputes "in connection with" a contract is contained in the recommended standard arbitration clauses of the ICC and the LCIA, among others, and is generally interpreted as denoting a broad arbitration clause, see, e.g., Gary Born, *International Commercial Arbitration* (Kluwer, 2009), pp. 1094-1095, who refers to the United States, English, Canadian, Indian, Hong Kong and Australian courts as having interpreted the phrase "in connection with" in such clauses "liberally".

Thus, when clause 20 of the FIDIC Conditions, which deals with claims and disputes, refers to a claim "under any Clause of these Conditions or otherwise in connection with the Contract" that provision should be interpreted broadly to cover not just a claim arising "under" the Conditions (e.g., under sub-clause 4.12 (Unforeseeable Physical Conditions)) but also, for example, as a result of its rectification, performance (e.g., tort claims), or even termination, as all have a "connection with the contract".

Accordingly, I do not see what is troublesome about "or otherwise in connection with the Contract" in sub-clause 20.1 of the FIDIC Conditions.

Yours sincerely,

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THE INTERNATIONAL CONSTRUCTION LAW REVIEW

Volume 28, January-October 2011

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2011

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© 2011. Informa UK Ltd

ISSN 0265-1416
ISBN: 978-1-908501-03-5

This volume of *The International Construction Law Review*
should be cited as: [2011] ICLR

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Typeset by Interactive Sciences Ltd, Gloucester
Printed in Great Britain by MPG Books Ltd, Bodmin, Cornwall
Printed on paper from sustainable sources