



# DISPUTE RESOLUTION

An overview of our practice



**DLA CLIFFE DEKKER  
HOFMEYR**

**EVERYTHING MATTERS**

# DISPUTE RESOLUTION

## LITIGATION AND ARBITRATION

Our dispute resolution lawyers have a reputation for succeeding in the most sensitive and complex litigation and arbitration cases.

The firm's primary aim is to help clients, many of which are leading multinationals and financial institutions, to avoid litigation wherever possible. When litigation is unavoidable, we focus on the commercial objectives of clients, while assessing legal, commercial and reputational risk.



As disputes can be costly and divert valuable resources from core business activities, our team is trained in devising the optimum procedural tactics or creative settlement approach.

Drawing on the expertise of nearly 70 litigation and arbitration lawyers across our two offices in Johannesburg and Cape Town, we have capacity to handle large, complex local, national or cross-border cases.

We offer a complete service in methods of dispute resolution. Our lawyers work together with clients to identify and execute the most advantageous business-oriented solutions, either by pursuing or defending arbitration or litigation proceedings, or through alternative methods, such as mediation.

Our Dispute Resolution lawyers are skilled in identifying the correct approach to disputes in order to influence outcomes more positively and manage risk most effectively.

Our lawyers operate in key business areas including commercial litigation, banking, industrial, tax, liquidation, insolvency, construction, product liability, media, aviation, insurance, forensic, contract, mining and minerals, and environmental law.

## OUR SERVICES

- **Commercial Litigation** - We act for corporates in commercial related disputes, such as disputes between shareholders, disputes regarding the interpretation of agreements, breach of contract and damages claims resulting from the breach of terms of agreements. Contractual disputes arise daily and assisting our clients in the successful resolution of these disputes is an essential part of our skills set within the many specialities in which we practice.
- **Aviation** - We act for a number of airlines, airport operators, suppliers to the airline industry and regulatory authorities, providing them with dispute resolution services both in respect of arbitration and litigation and with general advice in aviation matters.
- **Construction and Engineering** - Our clients include a number of the big names in construction and engineering in South Africa and internationally. As a result, we have long-standing relationships with experts in these fields.
- **Forensics** - In the course of acting for our substantial clients in the banking and commercial sectors, we frequently deal with forensic investigations in the context of corporate fraud. We have expertise in Anton Pillar type discovery procedures (increasingly prevalent in relation to computer-based data).
- **Insolvency, Liquidation and Restructuring** - Insolvency and liquidation are an inevitable part of commercial practice and we have acquired considerable experience over many years in representing our clients in this sphere, particularly as creditors, where our role is to ensure that our clients achieve the best result.
- **Insurance Dispute Resolution** - We deal with Short-Term Insurance, Life Insurance and Pension Fund disputes and act for a number of insurance companies and large brokerages. We manage insurance disputes across the spectrum, from aviation disputes through to professional indemnity claims.
- **Professional Negligence** - We can act for both the plaintiff, the defendant and the professional indemnity insurers. These matters are invariably technical and our experienced lawyers are well equipped to find the most appropriate dispute resolution process to manage the process to a successful conclusion.
- **Product Liability** - Product liability claims are a thorn in the side of manufacturing industries. We have dealt with product liability claims on behalf of our international manufacturing clients for many years.
- **Inquiries in the Mining Industry** - We have represented mining conglomerates in South Africa in many inquiries initiated by the Inspectorate of Mining, after accidents in mines or incidents where employees have been injured or killed.
- **International Litigation** - We litigate in many jurisdictions, particularly in the US, the UK, Europe and Africa.

## SELECTED EXPERIENCE

### Administrative

- Represented a mining company in disputes with the Department of Mineral and Energy Affairs including internal hearings and appeals to the relevant Minister
- Represented executive members of the Western Cape Provincial government in relation to administrative hearings

### Aviation

- Represented the national operator in proceedings instituted to ascertain the lawfulness of the withdrawal of the guidelines for interconnection and facilities leasing by the Minister of Communications
- Represented an airport company in an insurance claim in the amount of approximately R11m
- Reviewed the increase of airport tariffs on behalf of international airlines flying into Johannesburg
- Advised representative bodies of airlines including AOC, AOA and BARSAs on various matters including tariff disputes and ramp handling issues
- Acted for a number of international airlines relating to claims and losses and in respect of damages to various aircrafts

### Banking and Finance

- Represented a leading South African bank in a dispute with a software provider on the countrywide rollout of ATM software
- Represented a mortgage finance company in a dispute with a software house regarding the failure of a major software development to provide the functionality specified by the development contract

- Resisted an application brought against a JSE listed corporate where the applicant sought to suggest that an interactive booking system had been developed in breach of patented rights and copyright
- Advised a major South African Bank on the removal of directors of a subsidiary company in connection with fraud and breaches of good corporate governance
- Represented a leading South African bank in securing its intellectual property rights (and more particularly copyright) relevant to computer programmes written for its banking systems (where the contractors employed to assist with the writing of those programmes sought to develop similar software for their independent financial gain)
- Represented various financial institutions in reported cases involving bills of exchange, financing arrangements, exchange control, customised trade solutions, security documentation and letters of credit

### Insolvency

- Acting for the Fidentia curators in supervising the asset recovery process and supervising the Fidentia litigation and enquiry processes
- Acting for the joint liquidators in the liquidation of Hyundai Motors in which the insolvent estates had debts in excess of R1bn in South Africa and R900m in Botswana
- Advising the Reserve Bank in an African country and a major client in the United Kingdom on the South African laws on insolvency, liquidations and judicial management

### Insurance

- Represented a big four auditing firm in a dispute over the limits of indemnity in an insurance policy
- Advised London underwriters in respect of various issues relating to insurance
- Representing major insurance brokerages and insurance underwriters in regard to indemnity claims

### International

- Advised and represented a multinational corporation in private arbitration proceedings relating to a contractual breach for the procurement and commissioning of a gas cooler in Zambia
- Involved in actions in New York in both Federal and State Courts on behalf of defendant corporations, where jurisdiction and forum non conveniens points were successfully taken and where class actions, punitive damages and jury trials were involved
- Involved in an international court case involving the sale of a 1962 Ferrari GTO, which was the most expensive car deal in the world. The car was sold for £8m to a Japanese billionaire. The matter was heard in the courts of the United States of America and in Britain.
- Acted for an international credit bureau in securing an Anton Pillar order pursuant to the unlawful use of its database
- Represented an international motor corporation in a dispute arising from an assembly agreement with a third party motor corporation

### Product Liability

- Represented a multi-national soft drinks distributor, for several decades, in resisting product liability claims brought both in relation to alleged impurities as well as bottle or container failures
- Acted for a major pharmaceutical company in successfully opposing claims for damages based on strict liability
- Representing the bottler and distributor of a well known mineral water company in proceedings against Carte Blanche (a television magazine programme) in an action for damages following wrongful statements made on the programme

# WHY CHOOSE CLIFFE DEKKER HOFMEYR?

With more than 130 directors and 300 lawyers, Cliffe Dekker Hofmeyr is one of the largest business law firms in South Africa, combining a strong national presence with global reach.

Our legal teams are fairly evenly split between our Johannesburg (Sandton) and Cape Town offices, giving us a sizeable footprint in both key financial centres in South Africa.

Our exclusive relationship with DLA Piper, one of the largest legal services organisations in the world, extends our reach on behalf of our clients to all the major business centres globally.

Africa is a key growth area. As a member of DLA Piper Group with its network of firms across the African continent, we offer our clients an unparalleled pan-African service that combines international expertise with an excellent knowledge of local legal and cultural frameworks.

## OUR SERVICES

We offer a full complement of business legal services in ten core Practice Areas:

- Corporate and Commercial including Intellectual Property
- Competition
- Dispute Resolution: Litigation and Arbitration
- Employment
- Environmental
- Finance, Projects and Banking
- Real Estate
- Tax
- Technology, Media and Telecommunications
- Trusts and Estates

Our lawyers are specialists. The scale of the firm gives our lawyers the capacity to narrow their area of expertise, allowing them to specialise in a particular field of law and broaden their level of knowledge in that specialist area.

Our capacity brings the depth of skills and specialisation needed to meet the full service business needs of our clients, no matter the size of the transaction – large or small – anywhere in the world.

## EMPOWERMENT AND TRANSFORMATION

We aspire to be a firm that cherishes diversity and equal opportunity by actively contributing to attaining the objectives of Black Economic Empowerment

Cliffe Dekker Hofmeyr has achieved a **Level 3 Contributor** Empowerdex BEE rating. Some 30% of the firm's shares are controlled by black directors while 26% are held by women.

Our philosophy is that if it matters to our clients, it matters to us

# WHAT OTHERS SAY ABOUT US

At Cliffe Dekker Hofmeyr, we are regularly ranked as a first-rate firm in authoritative Legal profession directories and many of the firm's lawyers are highly recommended in their respective fields.

Cliffe Dekker Hofmeyr is rated as the top South African large law firm in 2009 in the *PMR.africa* survey, which annually assesses the country's top legal firms based entirely on client comments.

Named *Client Focused Law Firm of the Year 2009* (ACQ Finance Magazine Country Awards for Achievement).

Named *Full Service Law Firm of the Year 2009* (ACQ Finance Magazine Country Awards for Achievement).

Named *M&A Law Firm of the Year 2009*; *Public Procurement Law Firm of the Year 2009*; *Commercial Litigation Law Firm of the Year 2009* and *Management Labour and Employment Law Firm of the Year 2009* (ACQ Finance Magazine Law Awards).

Named *Legal Adviser of the Year 2008* (ACQ Finance Magazine Country Awards for Achievement).

Named *Best Corporate M&A Practice - Africa 2008* (The New Economy Legal Awards).

Named *Legal Advisers to the Deal of the Year 2008* as recognised by both *DealMakers* and *Ernst and Young (M&A Review for 2008)* for the Remgro and Richemont R180 billion restructuring.

**Our Dispute Resolution: Litigation and Arbitration practice is recognised as one of the leading practices in South Africa by accolades such as:**

## Chambers Global 2009

### Dispute Resolution – Tier 2

Chambers Global 2009 comments: Enhanced by the strength of its corporate and commercial department, this "*talented group*" includes partners whose work covers the full spectrum of commercial litigation.

The firm as a whole continues to grow, following its merger with Hofmeyr

Herbstein & Gihwala in 2008, a move that impacted positively on the department, adding the skills of **Pieter Conradie** to the fold. Clients praise his meticulous, details-oriented approach to regulatory and product liability work. **Sam Oosthuizen** has a busy practice involving aviation, banking and insolvency work for a client base that features KLM, Emirates and Lufthansa. His Colleague **Jonathan Witts-Hewinson** handles commercial litigation, arbitration and mediation.

**Individual Rankings:** Pieter Conradie; Sam Oosthuizen; Jonathan Witts-Hewinson.

## The Legal 500 Europe, Middle East & Africa Series, 2009

### Dispute Resolution – Tier 1

"DLA Cliffe Dekker Hofmeyr boasts one of the leading commercial disputes teams in Johannesburg. Jonathan Witts-Hewinson offers unparalleled experience, and Sam Oosthuizen is also recommended for banking litigation, as well as aviation disputes. 'Sam has extensive knowledge of the law and is confident and sure of the best approach' commented one client. In 2008, the team scored a coup by recruiting Terry Winstanley from boutique Winstanley and Cullinan Inc, who is president of the Environmental Law Association, and one of the country's foremost environmental Law Association, and one of the country's foremost environmental disputes experts."

## Practical Law Company PLC Which Lawyer? 2009

### Dispute Resolution

Our Dispute Resolution practice is highly recommended. **Pieter Conradie** is highly recommended as a 'general litigator and arbitration practitioner with an international remit with particular focus on product liability and telecoms'. **Jonathan Witts-Hewinson** is recommended in this field.

## Restructuring and Insolvency

The firm is highly recommended in this field. **Jonathan Witts-Hewinson** is also highly recommended.

## Best Lawyers International 2009 listings: Cliffe Dekker Hofmeyr is:

Ranked #1 in South Africa in Arbitration and Mediation with 3 attorneys

Ranked #1 in South Africa in Litigation with 5 attorneys

Ranked #1 in Sandton, Johannesburg, in Litigation with 5 attorneys

Individual listings:

Faan Coetzee	Litigation; Labour and Employment
Pieter Conradie	Arbitration and Mediation; Litigation
Tim Fletcher	Litigation; Insurance
Sam Oosthuizen	Arbitration and Mediation; Litigation
Jonathan Witts-Hewinson	Arbitration and Mediation; Litigation

**The Legal Media Group's Expert Guides - Guide to the World's Leading Product Liability Lawyers (2nd edition, 2008 - 2009)** has selected **Pieter Conradie** as one of the world's pre-eminent Product Liability lawyers.

**The Legal Media Group's Expert Guides, 2009**, lists **Pieter Conradie**, **Sam Oosthuizen** and **Jonathan Witts-Hewinson** among South Africa's pre-eminent Litigation lawyers.

**Who's Who Legal: International Who's Who of Business Lawyers** has named **Pieter Conradie** as an expert in the International Who's Who of Product Liability Defence Lawyers, 2009.

# CONTACT US

For advice, please contact any member of our Dispute Resolution team listed below.



**Pieter Conradie**  
Director  
National Practice Head:  
Dispute Resolution:  
Litigation and Arbitration  
**T** +27 (0)11 286 1109  
**E** pieter.conradie@dclacdh.com



**Grant Ford**  
Director  
Regional Practice Head:  
Dispute Resolution:  
Litigation and Arbitration  
**T** +27 (0)21 405 6028  
**E** grant.ford@dclacdh.com

**Ashley Adriaans**  
Director  
**T** +21 (0)21 481 6430  
**E** ashley.adriaans@dclacdh.com

**Roy Barendse**  
Director  
**T** +27 (0)21 405 6177  
**E** roy.barendse@dclacdh.com

**Eugene Bester**  
Director  
**T** +27 (0)11 290 7162  
**E** eugene.bester@dclacdh.com

**Fahdia Bhayat**  
Director  
**T** +27 (0)11 290 7130  
**E** fahdia.bhayat@dclacdh.com

**Harry Christodoulou**  
Director  
**T** +27 (0)11 290 7166  
**E** harry.christodoulou@dclacdh.com

**Lionel Egypt**  
Director  
**T** +21 (0)21 481 6400  
**E** lionel.egypt@dclacdh.com

**Tim Fletcher**  
Director  
**T** +27 (0)11 290 7164  
**E** tim.fletcher@dclacdh.com

**Dines Gihwala**  
Chairman  
Director  
**T** +27 (0)21 405 6087  
**E** dines.gihwala@dclacdh.com

**Craig Hindley**  
Director  
**T** +27 (0)21 405 6188  
**E** craig.hindley@dclacdh.com

**Anja Hofmeyr**  
Director  
**T** +27 (0)11 286 1169  
**E** anja.hofmeyr@dclacdh.com

**Willem Janse van Rensburg**  
Director  
**T** +27 (0)11 286 1125  
**E** willem.jansevanrensburg@dclacdh.com

**Julian Jones**  
Director  
**T** +27 (0)21 405 6100  
**E** julian.jones@dclacdh.com

**Tayob Kamdar**  
Director  
**T** +27 (0)11 286 1103  
**E** tayob.kamdar@dclacdh.com

**Richard Marcus**  
Director  
**T** +21 (0)21 481 6396  
**E** richard.marcus@dclacdh.com

**Riaan Meintjes**  
Director  
**T** +27 (0)21 405 6034  
**E** riaan.meintjes@dclacdh.com

**Burton Meyer**  
Director  
**T** +27 (0)11 286 1295  
**E** burton.meyer@dclacdh.com

**Rishaban Moodley**  
Director  
**T** +27 (0)11 286 1104  
**E** rishaban.moodley@dclacdh.com

**Nick Muller**  
Director  
**T** +21 (0)21 481 6385  
**E** nick.muller@dclacdh.com

**Byron O'Connor**  
Director  
**T** +27 (0)11 286 1462  
**E** byron.oconnor@dclacdh.com

**Kaamilah Paulse**  
Director  
**T** +21 (0)21 481 6420  
**E** kaamilah.paulse@dclacdh.com

**Marius Potgieter**  
Director  
**T** +27 (0)11 286 1190  
**E** marius.potgieter@dclacdh.com

**Shervaan Rajie**  
Director  
**T** +27 (0)21 405 6111  
**E** shervaan.rajie@dclacdh.com

**Lucinde Rhoodie**  
Director  
**T** +27 (0)21 405 6080  
**E** lucinde.rhodie@dclacdh.com

**Sam Oosthuizen**  
Director  
**T** +27 (0)11 290 7173  
**E** sam.oosthuizen@dclacdh.com

**Brigit Rubinstein**  
Director  
**T** +21 (0)21 481 6308  
**E** brigitt.rubinstein@dclacdh.com

**Zithulele Twala**  
Director  
**T** +21 (0)21 481 6399  
**E** zithu.twala@dclacdh.com

**Willie van Wyk**  
Director  
**T** +27 (0)11 286 1119  
**E** willie.vanwyk@dclacdh.com

**Joe Whittle**  
Director  
**T** +27 (0)11 286 1129  
**E** joe.whittle@dclacdh.com

**Derek Wille**  
Director  
**T** +27 (0)21 405 6085  
**E** derek.wille@dclacdh.com

**Jonathan Witts-Hewinson**  
Director  
**T** +27 (0)11 290 7178  
**E** witts@dclacdh.com



# CONTACT US

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## JOHANNESBURG

6 Sandown Valley Crescent  
Sandown  
Sandton 2196  
Private Bag X40  
Benmore 2010  
South Africa  
Dx 154 Randburg  
T +27 (0)11 286 1100  
F +27 (0)11 286 1264  
E [jhb@dclacdh.com](mailto:jhb@dclacdh.com)

1 Protea Place  
Sandown  
Sandton 2196  
Private Bag X7  
Benmore 2010  
South Africa  
Dx 42 Johannesburg  
T +27 (0)11 290 7000  
F +27 (0)11 290 7300  
E [jhb@dclacdh.com](mailto:jhb@dclacdh.com)

## CAPE TOWN

11 Buitengracht Street  
Cape Town 8001  
PO Box 695  
Cape Town 8000  
South Africa  
Dx 5 Cape Town  
T +27 (0)21 481 6300  
F +27 (0)21 481 6388  
E [ctn@dclacdh.com](mailto:ctn@dclacdh.com)

5th floor Protea Place  
Protea Road  
Claremont 7708  
PO Box 23110  
Claremont 7735  
South Africa  
Dx 5 Cape Town  
T +27 (0)21 683 2621  
F +27 (0)21 671 9740  
E [ctn@dclacdh.com](mailto:ctn@dclacdh.com)

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