

# Joe Whittle

Director



Joe Whittle is a Director in our Dispute Resolution practice and a member of our Construction & Engineering sector. Joe specialises in construction dispute resolution including mediation, adjudication, arbitration and litigation, and has experience in FIDIC, NEC 3, JBCC Series 2000, GCC and other forms of construction and engineering contracts, both in representing parties to disputes involving such contracts and in the negotiation of the terms thereof. Joe also has a wide range of experience in general commercial litigation, litigation pertaining to medical aid schemes and insolvencies.

## About Joe

## Credentials

### Education

- BCom LLB, University of KwaZulu-Natal
- Year of admission as an attorney: 1985

## Experience

- Representing a party to a joint venture involved in an EPCM services contract relating to the construction of a uranium processing plant in Namibia.
- Representing the developer and landlord of a hospital in KwaZulu Natal in a dispute with its tenant regarding the condition of the operating theatres and assisting the client with the settlement of a claim against the mechanical engineers relating to defective design.
- Representing the owners of a shopping centre upgrade project in disputes with its contractor, the termination of the relevant contracts and the successful calling up of the construction guarantees.
- Representing the developer of a renewable energy project under the Department of Energy's REIPPP Programme in High Court and arbitration proceedings.
- Representing a state-owned entity in multiple adjudications, arbitrations and High Court proceedings under the NEC 3 form of contract relating to a pipeline project joining KwaZulu Natal and Gauteng provinces for the supply of liquid fuel products.

## Contact Joe

+27 (0)11 562 1138

[joe.whittle@cdhlegal.com](mailto:joe.whittle@cdhlegal.com)

[Joe on LinkedIn](#)

## Expertise

[Dispute Resolution](#)

[Construction & Engineering](#)

[Insurance Law](#)

## Location

[Johannesburg](#)

## Language

[English](#)

[Afrikaans](#)

- Representing the owner and lenders regarding claims made under a bespoke EPC contract based on the FIDIC Yellow Book relating to the construction of a gas fired power station being constructed in Mozambique.
- Representing the infrastructure development arm of a major local municipality in dispute adjudication proceedings relating to disputes under several JBCC Series 2000 principal building agreements.
- Representing a state-owned entity in dispute adjudication proceedings under the NEC 3 form of contract relating to the widening and deepening of the Durban Harbour entrance
- Advised the Curators of the Fidentia Group (under curatorship) in various legal proceedings for the recovery of misappropriated funds.
- Advised the Curators of Medcover Medical Aid Scheme (under curatorship) in claims against various insurers and former management companies for the recovery of funds.
- Advised a development corporation in various litigious matters including the urgent winding up of several companies in a hospital group.
- Represented a jewellery company in the enquiry into the affairs of Retail Apparel Group (in liquidation) (RAG).
- Represented an airline company in urgent proceedings brought against it relating to its newly issued credit card.
- Represented a banking institution in legal proceedings brought against it by former employees for the recovery of various claims.

## News

### Unconscionability as a defence to on-demand guarantees

On-demand performance guarantees are a staple in construction and engineering projects due to their commercial function of 'as good as cash' security, providing employers with prompt and reliable security if contractors fail to meet their obligations. Demand guarantees are designed to be autonomous instruments. The guarantor's obligation to pay arises upon presentation of a demand that complies with the guarantee's terms, regardless of disputes under the underlying contract (the independence principle). The independence principle is the main charm of demand guarantees, as the South African courts have consistently upheld the independence of these guarantees, with fraud by the beneficiary being the only recognised exception to payment.

### The issue of procedural rights and settlement agreements in the adjudication of the defence of fraud against the enforcement of a performance guarantee

The parties to a construction contract often agree to the conclusion of separate financial arrangements with third parties for the purposes of ensuring financial security and project success. Where such an agreement is in place, the contractor procures an undertaking furnished by a guarantor, who is an authorised financial services provider, to pay a specified amount to the employer where the contractor (or subcontractor) fails to perform in terms of the contract. This undertaking is known as a performance guarantee.

### Back to the future: Harnessing Building Information Modeling for Greening Retrofit Projects

Amid the international push towards sustainability and energy efficiency, retrofitting existing buildings into greener models is a crucial strategy for reducing the consumptive effect that the built environment has on its surroundings. Buildings typically account for 40% of a city's total energy usage, with electricity in the built environment accounting for nearly a quarter of South Africa's carbon emissions. Retrofitting existing structures can thus play a significant role in infusing the built industry with environmentally-sustainable solutions.

### Termination for convenience: Traversing the termination tightrope in NEC 3 contracts

Enforcing the contractual right to terminate a construction contract is a serious choice and must always be approached with caution. This is especially so in the case of the widely used suite of NEC 3 construction contracts, where the parties are afforded various possible contractual grounds for termination in the "Reasons for termination" provisions.

[While the world wars on, contracts without an escalation clause could leave contractors embattled, high and dry](#)

In recent times, construction contractors in South Africa have experienced severe financial constraints as a result of the COVID-19 pandemic and its effect on the construction industry, as well as supply chains being disrupted by a shortage of materials and the unexpected rise of costs due to price increases exacerbated by currency fluctuations

## Videos

[Webinar Recording | Risks facing construction projects in Africa](#)

Our panel of experts gave an overview of the challenges and constraints that face players in the construction industry in Africa and practical insights on how to handle them.

## Podcasts

[When the neighbouring building developer plans ruin your scenery](#)

Dispute Resolution Director, Joe Whittle & Associate, Reece May joined Classic FM to discuss what building owners should do when the neighbouring building developer plans ruin your scenery.

[All news by Joe Whittle →](#)

## Recognition

- Chambers Global 2020–2025 ranked Joe Whittle in Band 3 for construction.
- The Legal 500 EMEA 2017–2025 recommended him for construction.