



## Damages in International Arbitration under Complex Long-term Contracts (Oxford International Arbitration Series)

By Herfried Wöss

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Damages are a topic of central importance in international arbitration, being very often the principal concern of the parties, and an indication of the performance of their counsel. They are also one of the most complex topics. This book addresses the many competing factors that contribute to their nature and amount: while they are compensatory, they may be subject to counterclaims and set-offs, affected by failures to mitigate, or inflated by considerations such as interest and costs. Specialist evidence is relied on to complete composite calculations, taking into account such evasive factors as the destruction of market value, uncertainty of future revenues, projected interest rate changes, and lost dividends. The lack of understanding of the underlying considerations, methods such as "splitting the baby", or dogmas such as the misinterpreted "efficient breach of contract", combined with the already high level of burden of proof, can make successful damages claims or properly reasoned awards difficult to achieve.

This book provides in-depth analysis of the legal, financial, and economic issues involved in the preparation of claims and arbitral awards for damages and loss of income, for the breach of complex long-term contracts in international arbitration. The authors address matters such as the but-for method and the reconstruction of the hypothetical course of events as well as the quantification of damages.

It provides a detailed coverage of issues arising when structuring, arbitrating, or making an award on damages, making it a valuable reference for practitioners in the field. It includes a number of leading cases (including commercial and investment arbitrations), focusing on the damages analysis for breach of contract.

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### Editorial Review

#### Review

Written with the specialized practitioner as audience in mind, the book's utility is reinforced by the legal, economic, and financial experience of its four authors, which results in a book full of specialized knowledge of damages-related legal theory, accounting techniques, and forensic analyses. In short, the book acts as an astute single-volume resource that offers highly sophisticated guidance on CLTC international arbitration. A. Devin Bray, *The Journal of World Investment and Trade* Its scope is highly specialised, but practitioners involved in any type of significant contractual or treaty arbitration will not be disappointed if they keep a copy handy. One of the reasons the book is particularly useful is that it helps the reader understand not just the legal theories but also the accounting techniques and forensic issues underpinning damage calculation ... It is a testament to the quality of the book that the recent final award in *Yukos Universal Limited v Russian Federation* largely espouses the views expressed in it. Anibal Sabater, *Global Arbitration Review* This book is a useful one-volume reference ... (and) is a must for practitioners and arbitrators as they tend to be lawyers steeped in legal concepts but often overwhelmed by numbers. Ko-Yung Tung, *ICSID Review* For those advising in relation to difficult damages issues which can arise in complex long-term contracts, this book provides a most useful and comprehensive reference for the many issues which are likely to occur. Hilary Heilbron QC, *Brick Court Chambers. Journal of International Arbitration* The particular merit of this work lies in the diversity of perspectives it presents. The thorough analysis of the legal framework is accompanied by comprehensive considerations of economic and financial nature, which combined will serve as a solid reference for the making of well-reasoned and fair awards on damages. This book will prove very useful to all professionals specializing in international arbitration, both in Civil law and Common law jurisdictions. Bernd Ehle, Partner, LALIVE

#### About the Author

**Herfried Wöss**, Partner, *Woss & Partners, S.C.*, and Visiting Professor of Arbitration at *Georgetown University Law School*; **Adriana San Román Rivera**, Partner, *Woss & Partners, S.C.*; **Pablo Spiller**, Jeffrey A. Jacobs Distinguished Professor of Business & Technology, *University of California, Walter A. Haas School of Business, Berkeley*; **Santiago Dellepiane**, Senior Vice-President at *Compass Lexecon*

Herfried Wöss is a founding partner of *Woss & Partners, S.C.* and has over twenty years of experience in prominent law firms, as well as at the Mexican Ministry of Labour and Social Affairs and the European Commission. He specializes in investment and commercial arbitration, with an emphasis on construction disputes, directors' disputes, and expert proceedings, as well as WTO and NAFTA panels. He currently manages a multi-million arbitration portfolio as sole- and co-arbitrator, party counsel and legal expert. Dr. Wöss also founded the Investment Arbitration Forum (Mexico).

Adriana San Román Rivera, is a partner *Woss & Partners, S.C.*, where she has worked for ten years as an attorney at law and financial analyst, having previously worked for *Obregon, Quintana y Woss, S.C.* and for the National Bank of Mexico. She has extensive experience in corporate banking, financial engineering and risk analysis; legal-financial structuring of projects and infrastructure projects; legal-financial strategies in damages claims, mergers & acquisitions and anti-dumping and subsidy procedures. Adriana was Ford foundation scholar of the University of Exeter where she studied for an M.A Finance & Investment.

Pablo T. Spiller is the Jeffrey A. Jacobs Distinguished Professor of Business and Technology at the Haas

School of Business, University of California, Berkeley; Senior Consultant at Compass Lexecon; Research Associate at the National Bureau of Economic Research; and the former President of the International Society for New Institutional Economics. Prior to joining Compass Lexecon he was the co-chair of the International Arbitration Practice Group at LECG. He is Editor-in-Chief of the Journal of Law, Economics, and Organization, and Associate Editor of the Journal of Applied Economics, the Regulation Magazine, the Journal of Comparative Economics. Dr. Spiller has extensive consulting and expert testimony experience. He has testified as expert in more than ninety international arbitration cases.

Santiago Dellepiane is a Senior Vice President with Compass Lexecon. He has worked extensively as a consultant for utilities, regulated, and non-regulated businesses. His work involves economic analysis, valuation, business advisory, damages assessment and intellectual property issues. Mr. Dellepiane has testified on valuation and damages issues. For over fourteen years he has worked on a large variety of economic, valuation, and business consulting engagements for clients in several countries and in sectors including infrastructure, energy, consumer products, media and hospitality franchises, and has been a project manager working with counsel on treaty and commercial arbitrations under ICSID, ICC and other venues, U.S. litigation proceedings, and Canadian Court proceedings. Mr. Dellepiane was previously a Principal with LECG, LLC and General Manager of its International Arbitration Practice Group, where he was responsible for the management of the practice.

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