

Liquidated Damages: Know the Law or Pay the Price

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Liquidated damages clauses are a key provision in shipbuilding and offshore construction contracts. They provide certainty as to the amount of money that will be paid as damages in the event of delays to delivery or failure to meet specified performance criteria regardless of the loss actually suffered. Not only do they fix in advance the damages that will be payable, they also serve to limit a contractor's exposure. What happens though when the contract is terminated prior to completion but after liquidated damages fall due? Is the contractor obliged to pay those liquidated damages that have already accrued or does the liquidated damages clause no longer apply, with damages being assessed on the normal basis? This was the issue that fell to be decided by the Supreme Court in *Triple Point Technology, Inc v. PTT Public Company Ltd* in relation to a software agreement.

The decision also looked at the limitation of liability clause and considered the meaning of "negligence" in such a clause and whether the liquidated damages were subject to a cap contained in the clause.

Facts

On 8 February 2013, PTT ("the Employer"), a Thai company that trades in oil and gas, entered into a contract with Triple Point Technology ("the Contractor"), a US-based company that specialises in the development and implementation of commodities trading software. Under the terms of the contract, the Contractor was to design, install, maintain and licence software to enable commodity trading. The total price of US\$6.92m, was to be paid in instalments upon the achievement of nine "milestones".

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