

Fiona Cain in Global Banking & Finance Review: When Reasonable Skill and Care is Not Enough

November 6, 2018 Fiona Cain

RELATED PRACTICES Shipping Dispute Resolution, Construction Litigation, Energy, Power and Natural Resources, Offshore Oil and Gas Dispute Resolution, Litigation, Shipping

A design and construction contract will usually oblige the contractor to design and build in accordance with the specification and perform that work to an agreed standard. These obligations may be limited by a provision which imposes a duty on the contractor to perform its obligations with “reasonable skill and care.” However, as the recent Scottish law case of *SSE Generation Ltd. v Hochtief Solutions AG and Another* illustrates, there are costly consequences for contractors, and potentially their insurers, of agreeing to meet such obligations, without ensuring that the limitations on their performance, including the duties imposed, extend to all relevant obligations.

The Facts

SSE Generation Ltd. (“SSE”) contracted Hochtief Solutions AG (“Hochtief”) to design and construct a new hydro-electric scheme in Scotland.

Within six months of takeover of the works by SSE, a tunnel that formed part of the civil works collapsed.

Under the contract, Hochtief was liable for loss or damage occurring within two years of a takeover provided that it was caused by a defect which existed at takeover.

A defect was defined in the contract as “(1) a part of the works which is not in accordance with the Works Information or (2) a part of the works designed by the Contractor which is not in accordance with ... the Contractor’s design which has been accepted by the Project Manager.”

Hochtief claimed that their liability for defects was limited because they were under a duty to only use “reasonable care and skill” in complying with the design. As a result, they refused to carry out the rectification work without payment, and SSE instructed a third party, Royal BAM group, to construct a bypass tunnel.

SSE commenced proceedings to recover the costs of the remedial project, some £130 million (more than the original cost of the project), from Hochtief. ...

To read the full *Global Banking & Finance Review* article, click [here](#).