

Don't let assignment get the better of you

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PRACTICES International Arbitration, Litigation

Introduction

In the recent case of *Energy Works (Hull) Ltd v MW High Tech Projects UK Ltd* [2020] EWHC 2537, the Technology and Construction Court considered the effect of provisions which require contractors to assign subcontracts on termination. The court's decision is that the contractor in the case had no recourse to its subcontractor under their subcontract in respect of claims from the employer following termination and had only limited alternative recourse. Similar assignment provisions can be found in the JCT, NEC and FIDIC standard forms of contract, making the court's findings of broad application.

Background

In 2015 Energy Works (Hull) Ltd ("EWHL") appointed MW High Tech Projects UK Ltd ("MW") as its main contractor for the design, procurement, construction, commissioning and testing of a waste to energy plant in the north of England. The parties entered into a contract based on the IChemE Red Book, with bespoke amendments (the "Main Contract").

In turn, MW subcontracted certain elements of the project to Outotec (USA) Inc ("Outotec") under a contract based on the IChemE Yellow Book (the "Subcontract"). The subcontractor provided a collateral warranty in favour of the employer, which entitled the employer to step in to the Subcontract if the Main Contract was terminated. In addition, both contracts entitled the employer to require that the sub-contract was assigned to it if the Main Contract was terminated.

The project ran into difficulty, suffering significant delays, and EWHL purported to terminate the Main Contract due to MW's delay in completing its works, including outstanding defects, with the result that delay damages exceeded the contractual cap.

Read the full article [here](#).