

Fiona Cain in Insurance Day: Legal Focus: Contractual Conflicts Are Potentially Costly For Insurers of Contractors

By Fiona Cain | May 8, 2018

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Under a design and construction contract, a contractor will usually agree to build in accordance with the specification and perform that work to agreed standards. The obligations in these often complex and detailed contracts can be hidden away, not fully appreciated or conflict.

The Supreme Court judgment in *MT Højgaard A/S v. E.ON Climate and Renewables UK Robin Rigg East Ltd & Others* and the recent decision of the Scottish Court of Session in *SSE Generation Ltd v. Hochtief Solutions AG and Another*, which are discussed in the article, illustrate the costly consequences for contractors and potentially their insurers of agreeing to meet such obligations. ...

... It is essential that parties entering into design and construction contracts review the contract as a whole, including the specification and technical requirements, to identify the obligations of both parties and determine, where there are competing requirements, the higher standard that they should satisfy and the extent of any limitation clause. Particular care should be paid to design life warranties as these can override less onerous requirements as illustrated above.

All obligations should be considered against the insurance coverage that will be put in place in order to determine whether there is a risk of uninsured losses arising. These two cases did not comment on the insurance liability in respect of the contractors. In both instances, substantial liability was incurred by the contractors and it maybe that these sums were paid by insurers but where this is not the case, this could result in the contractor being made insolvent and the employer being unable to recover its losses.

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