

Glenn Kangisser and Fiona Cain in Maritime Risk International on Recent UK Supreme Court Ruling on Liquidated Damages Clauses

November 4, 2021 Glenn Kangisser, Fiona Cain

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Parties to shipbuilding and offshore construction contracts generally welcome the certainty afforded to them by liquidated damages clauses which address the question of damages payable in the event of specified breaches. Such clauses not only limit a contractor's exposure, but they also remove the need for an employer to prove their loss (potentially an expensive and time-consuming process).

Uncertainty had arisen as to how should such clauses operate when a contract is terminated after liquidated damages have become due but before the contract is completed. Does the contractor, nevertheless, need to pay those liquidated damages which have already fallen due, or do the liquidated damages "evaporate", leaving damages to be assessed on the general basis? The Supreme Court clarified the position recently in *Triple Point Technology Inc v PTT Public Company Ltd* [2021] UKSC 29; [2021] BLR 555.

This article reviews that decision looking at liquidated damages and the meaning of "negligence" in a limitation of liability clause, considering whether it covered only negligence as an independent tort or extended to breaches of contractual duties to exercise reasonable skill and care.

Background

PTT, a Thai gas and petroleum company trading in oil and gas futures, entered into a contract on 8 February 2013 with Triple Point Technology, a US-based company that develops and implements software solutions in the energy sector. Triple Point was to design, install, maintain and licence software to PTT, which would facilitate PTT's commodity trading activities. PTT was to pay a total of US\$6.92 million to Triple Point in nine instalments, each to be paid on the achievement of a "milestone" or completion of a phase of the contract.

Work under the contract commenced in March 2013; however the project was significantly delayed and, in May 2014, a dispute arose as to Triple Point's entitlement to additional sums. The situation deteriorated and PTT gave notice to terminate the contract in March 2015. Triple Point commenced proceedings against PTT claiming allegedly due licence fees. PTT denied these claims and counterclaimed, including a claim for liquidated damages under the contract up until the date of termination.

Excerpted from *Maritime Risk International*. To read the full article, click [here](#). (Subscription Required)