LEGAL BRIEFING

TYCO FIRE & INTEGRATED SOLUTIONS (UK) LTD (FORMERLY WORMALD ANSUL (UK) LTD) v ROLLS ROYCE MOTOR CARS LTD (FORMERLY HIREUS LTD)

Sir Anthony Clarke MR, Rix LJ and Keene LJ (Court of Appeal - Civil Division)

The Facts

Rolls Royce Motor Cars Limited built a new manufacturing plant in West Sussex. Tyco Fire & Integrated Solutions (UK) Limited was contracted to provide fire protection services, including a sprinkler system.

Unfortunately, during construction, one of the mains supply pipes burst and caused a flood, damaging both the construction works and other parts of the plant. It was accepted that this occurred as a result of Tyco's negligence.

Tyco repaired the new construction works. The key dispute between the parties was whether Tyco was liable to Rolls-Royce in relation to the damage to existing structures. Tyco argued that, because the contract provided for joint names insurance under Rolls-Royce's Employer's policy, it was relieved of liability for its own negligence. The Trial Judge agreed with Tyco and entered Judgement against Rolls-Royce in the sum of £433,428.08. Rolls-Royce appealed.

Tyco relied upon the decision in *Co-operative Retail Services Ltd v Taylor Young Partnership Ltd* [2002] UKHL 17, 1 WLR 1419 and clause 13.5 of the contract. Clause 13.5 provides as follows:

"The Employer shall maintain, in the joint names of the Employer, the Construction Manager and others, including, but not limited to, contractors, insurance of existing structures…. against the risks covered by the Employer's insurance policy referred to in Schedule 2….subject to the terms, conditions, exclusions and excesses (uninsured amounts) of the said policy."

Rolls Royce did not in fact take out any insurance in the joint names of itself and Tyco, but the issue had to be resolved as if it had. Tyco argued that one joint name cannot recover from another joint named insured in respect of the same loss. On the other hand, Rolls Royce relied on Tyco's express obligation under the contract to indemnify the Employer against any damage, expense or loss suffered which arises out of any negligence on the part of Tyco (a standard obligation contained in contracts of this type). Therefore, Rolls Royce argued, the provision for joint names insurance did not expressly nor impliedly exclude liability that otherwise fell to Tyco under the contract.

The Issue

The main issue which arose at trial was whether Tyco was liable to Rolls Royce for damage to existing structures in light of clause 13.5 of the contract.

The Decision

The appeal was allowed. The Court found that clause 13.5 was not intended to give Tyco or any individual contractor separate liability insurance in respect of the existing structures outside the areas of its own works. All that the phrase

was intended to do was state that the employer's policy insuring its own property on the site encompassed a series of joint name policies which protected others, including, but not limited to, contractors. The rationale behind this was so that contractors could have the confidence that, if disaster struck, the employer would have the resources to reinstate it and ensure that the contractor's works could be performed. This was supported by the general construction of the contract as a whole.

The Court found that the decision in *Co-operative Retail Services Ltd v Taylor Young Partnership* was not applicable. The Court decided that the decision in that case, namely that the provision for joint names insurance under a construction contract would give rise to an implied term that neither party could make claims against the other in respect to damage caused to the works covered by a policy which insured both parties, was applicable to the contract in that particular case and was not applicable here. The contract in question contained highly detailed provisions which made it clear that they were intended to override any liability for negligence on the part of the contractor insofar as damage fell within the scope of the joint names policy provisions. The contract in this case did not contain the same detailed provisions.

Comment

The Decision in this case may come as a surprise to some in the industry: it is often assumed that any provision for joint names insurance must mean the contractor will benefit from such a policy in the case of its own negligence.

However this case highlights the importance of reading any such provision closely and construing it in light of the contract as a whole. Many construction contracts contain an indemnity from the contractor in favour of the employer for any damage caused by the contractor's negligence. Parties would be well advised to read this provision against any provision for joint names insurance before committing to a construction contract to ensure the allocation of risk is fully understood.

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