

Facts

Carillion was the main contractor on the development of train depot near Wembley. Following substantial excavation works the sides to the excavation pit became unstable. Carillion brought a claim against its specialist design and build contractor, PHI Group Ltd ("PHI"), and its consulting engineers and lead consultants Robert West Consulting Ltd ("RWC").

RWC's contractual obligations required it to complete and execute the design work for the entire project, this involved co-ordinating with other designers, such as PHI. PHI had the specific responsibility of designing and building works known as "soil nailing". PHI's design for those works was defective and RWC failed to spot those defects when coordinating PHI's designs, which ultimately caused the instability.

Key Points

This case considered how responsibility should be apportioned between the contractor who actually caused the defects and the supervisor of that contractor.

The usual division of responsibility is roughly 75% and 25% between the contractor and the supervisor respectively.

However, in this case, after analysing the precise contractual duties of the parties involved, it was clear that the RWC's supervisory role went beyond simply checking designs, it had ultimate design responsibility for the whole works.

As a result of this increased responsibility the judge approached the division of liability from a starting point of a 50:50 split in responsibility. The judge then considered during the pre-construction phase of the works that the parties' design responsibilities with regard to this one aspect of the project were equal. However, during the construction phase PHI had greater involvement as the party actually implementing the design and therefore more responsibility, as a result the eventual split between PHI and RWC was 60% and 40%.

Implications for Engineers

- This case highlights how essential it is for engineers to know where their design responsibilities begin and end in a specific project.
- Where engineers have a lead consultant role and have responsibility for the overall design of a project they will have greater exposure to liability than they have had in past cases.

Click here for the judgment on [Baillii](#):

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Their partners and lawyers have gained experience in private practice, in-house at surveying practices and within the claims departments of insurers, which gives them a real breadth of experience not available to many others when considering claims. For further information please contact Tom Green on 020 3060 6536.

Howden Insurance Brokers have operated in the Engineering Sector for over 15 years and look after the Professional Indemnity insurance requirements of over 400 engineering firms. If you wish to discuss your insurance requirements please contact Joanne Robinson or Taurai Ushe on 020 7648 7210 / 020 7645 9312 or by email <mailto:jrobinson@howdengroup.com> / <mailto:tushe@howdengroup.com>.

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