

Facts

Linklaters engaged a developer to refurbish some new premises, who in turn engaged Sir Robert McAlpine as its main contractor. How Engineering Services Ltd ("How"), was the subcontractor assigned to work on an air conditioning system for the premises. How then further subcontracted this work to Southern Insulation (Medway) Ltd ("Southern"), who was the sub-subcontractor.

The insulation work to the air conditioning system was ultimately found to be defective, and as a result the pipe work corroded, costing Linklaters £2.8 million to replace.

Key Points

The court considered whether a subcontractor, such as Southern, could owe a duty of care to the end user of a building despite having no contractual relationship with that end user. The court found that in principle a duty could be owed.

The case also opens up the possibility that in situations where one part of a building damages another part, for example a defective central heating system explodes destroying a house, the damage to the house is of a type that could be recoverable from a negligent central heating contractor (this is known as damage to "other property"), while the damage to the central heating system could not (as this is damage to the "thing itself"). Prior to this case, "other damage" could only be recovered from architects, engineers and other professionals.

Implications for Engineers

- Whereas the first case considered non-contractual duties where there was (or at least had been) a contract in place, this claim considered the situation where the owner of a building never contracted (whether by way of collateral warranty or otherwise) with a sub-contractor engaged in the construction of the building. This case increases the likelihood that a sub-contractor owes a building owner a non-contractual duty of care. Arguably, as a result, engineers on a project are less likely to be the primary target for the building owner.
- As well as increasing the number of parties a building owner can claim against, the case also opens up the possibility that damage to "other property" can be claimed against sub-contractors. Previously a claimant would only be able to claim this type of damage against a professional, such as an engineer. This could potentially reduce the quantum of claims against engineers.

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 Ushie on 020 7648 7210 / 020 7645 9312 or by email <mailto:jrobinson@howdengroup.com> / <mailto:tushe@howdengroup.com>.

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