

Contractors' liability and contract works exclusion

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The Federal Court of Australia in [Prestige Form Group NSW Pty Ltd v QBE European Operations plc \[2023\] FCA 749](#) examined the interpretation of an exclusion for damage to contract works in a contractors' liability policy, ruling that the exclusion was not confined to the insured's 'own contract works'.

The claim involved damage to contract works during construction when formwork failed causing a large concrete slab to collapse onto the floor below.

Facts

Richard Crookes Construction Pty Ltd had engaged Prestige to carry out the formwork. When another subcontractor was pouring concrete into the formwork in one of the basements, it failed and collapsed, causing damage to the floor underneath.

Richard Crookes Construction Pty Ltd sought AUS\$2m from Prestige for the damage.

Prestige claimed under its policy with QBE which accepted that the loss fell within the insuring clause. However, it applied the exclusion for 'Contract Works' which stated:

"The Insurers shall not be liable to indemnify the Insured in respect of or in any way connected with any... liability in respect of damage to property which consists of or forms part of the Contract Works"

On that basis, QBE declined the claim.

Prestige argued that use of the word "the" in "the Contract Works" meant that the exclusion only applied to the insured's own contract works or those in its possession, so did not apply in this instance.

QBE argued that the ordinary and natural language of the Contract Works exclusion did not support Prestige's position and that the absence of the words "the insured's contract works" meant that the intention of the exclusion was clear.

Court's decision

The Federal Court agreed with QBE and rejected Prestige's arguments.

In analysing the exclusion, the judge looked at the wording of other exclusions in the QBE policy which referred specifically to the insured, for example the 'Faulty Workmanship' exclusion which excluded work "done or undertaken by the Insured".

By contrast, the Contract Works exclusion had no such wording.

Accordingly, the Federal Court held that “Contract Works” for the purpose of the exclusion were not limited to those owned by or in the possession of the insured which makes the claim under the policy; the exclusion was interpreted in favour of QBE.

Comment

Although a decision of the Australian courts, and so persuasive but not binding on an English court, the decision is a useful reminder of the scope of exclusions in contractors’ liability policies with regard to contract works.

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