Browne Jacobson

Contractor insolvency: Peabody Trust v NHBC

28 October 2024

In a recent summary judgment application in Peabody Trust v National House Building Council, the court had to consider when limitation periods commence in the event of contractor insolvency.

In this article we consider the judgment, and why it matters for insurers.

The application

Catalyst Housing Limited (Catalyst) had taken out insurance with National House Building Council (NHBC) in relation to the construction of 88 homes. The policy included an indemnity for additional amounts payable to complete the homes in the event of the contractor's insolvency (which, for the purposes of the policy, included administration). Peabody Trust (Peabody) had assumed Catalyst's right cover under the policy.

Construction commenced in 2015, but by 29 June 2016 the contractor entered administration and works ceased. This resulted in the appointment of a construction manager, which enabled works to recommence and the construction was finally completed in 2021. In 2023 Peabody issued a claim for c.£1 million for additional costs it says would not have been incurred but for the insolvency. NHBC issued an application for summary judgment and strike out, asserting that the six year limitation period for bringing the claim started at the point of entry into administration. In defence of the application, Peabody argued that the limitation period commenced when the increased costs arising from the administration were incurred, and not from the date of the administration itself. This was not until 2020.

The judge agreed with Peabody that the limitation period did not start running at the point of administration, but rather when the additional costs began to be incurred. The judge's reasoning was that at the point of entry into administration it was not necessarily inevitable that additional costs would be incurred as a result. The application for summary judgment and strike out therefore failed.

What does this mean for insurers?

When considering construction risks, underwriters should be mindful of the risks posed by historic projects undertaken by insureds where there have been historic insolvencies, even where such insolvent events appear to have occurred many years ago.

Contents

[Contractor insolvency: Peabody Trust v NHBC](#) →

[Ozempic: The rising costs and coverage issues of weight loss medication](#) →

[Insurability by design: Increased transparency for vehicle manufacturers and insurers](#) →

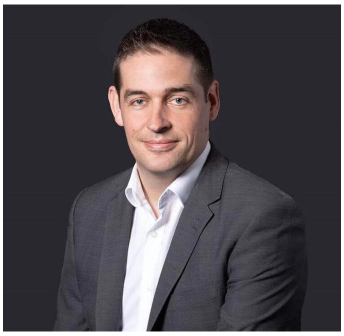
Author

Felicity Pallas

Paralegal

felicity.pallas@brownejacobson.com

+44 (0)330 045 1173



Tim Johnson

Partner

tim.johnson@brownejacobson.com

+44 (0)115 976 6557

Related expertise

Services

Construction all risks

Coverage disputes and policy interpretation

Insurance claims defence

Policy drafting and distribution