

The need for negotiation

Julie Hamilton, Senior Associate with MacRoberts, explains why negotiation should always be the first option in a construction dispute.

The construction industry can be a complex industry made up, as it is, of a multitude of parties including contractors, subcontractors, sub-subcontractors and even sub-sub-subcontractors. As a result, claims are inevitable.

It's no wonder then, that many construction firms will have experience of either seeking to recover settlement payments from a third party or having to deal with a claim based on a settlement.

What's the attitude of the law courts to these types of claims?

Well, the recent case of *John F Hunt Demolition v ASME Engineering* gave a "thumbs up" to the settlement of claims through clear negotiating.

In brief, the background to the case was that the main contractor appointed Hunt for demolition work. Hunt, in turn, appointed ASME Engineering to construct a temporary steel structure to support the facades during the demolition. As soon as ASME started on the welding work however, the facades caught fire.

ASME was blamed for the damage but it was Hunt who received a joint claim from the client and main contractor, which Hunt agreed to settle for £152,500. Around £109,000 related to the client's losses.

Soon after, Hunt sought to claim its losses from ASME.

However, ASME quickly pointed out the contract contained a fire damage exclusion stating the risk should be carried by the insurers. This meant Hunt never had any legal liability and had paid out £109,000 for which it was not liable.

This could have been the end of the matter. In court, meanwhile, the judge wanted to raise a point: "Unless the claim was of sufficient strength reasonably to justify a settlement, and the amount paid in settlement is reasonable having regard to the strength of the claim, it cannot be shown that the loss has been caused by the relevant breach of contract".

In this case, the total settlement of £152,500 was judged to be unreasonable as there was no legal duty of care owed by the subcontractor to the employer.

On the other hand, the judge added: "the settlement of an intrinsically weak claim in order to avoid the uncertainties and expenses of litigation may well be reasonable; a claim will usually have to be so weak as to be obviously hopeless before it could be said that the settlement of the claim was unreasonable".

If it was reasonable to settle the claim and if the amount of the settlement was reasonable, then Hunt could recover the full amount paid out, regardless of the fact

that it was not liable. The maximum value of Hunt's claim against its subcontractor, ASME, and therefore the current claim against the sub-subcontractor, was £43,500 which represented the main contractor's own losses as a result of the fire.

The first lesson here is that if a settlement is to be passed on to a third party, those entering into settlement arrangements should know exactly what they are settling and why.

The other lesson is that the courts will almost always try to support the settlement of claims by negotiation, even to the extent of allowing the recovery of a settlement payment where there is no liability.

Of course, each construction case which ends up in the law courts turns on its own individual facts and figures. It would be unwise to compromise any claim without taking proper advice first.

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