

Hojgaard – Not fit for purpose

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Why it is important?

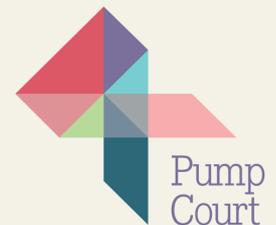
- Thorn v The Mayor and Commonalty of London (1876) 1 App Cas 120

What does it mean?

Obligation to use reasonable skill and care in the design and/or construction

becomes

A guarantee that the “product” will work



Hojgaard v E.ON Climate - Contract

- Clause 8.1
 - – carry out the works in a professional manner;
 - - comply with all good industry practice;
 - - each item of the Plant and the Works shall be fit for its purpose.

Hojgaard v E.ON Climate – Technical Requirements

- Clause 3.2.2.2 (i)
 - Prepare design in accordance with J101
- Clause 3.2.2.2 (ii)
 - *The Design of the foundations shall ensure a lifetime of 20 years in every aspect without planned replacement. The choice of structure, materials, corrosion protection system operation and inspection programme shall be made accordingly*

Hojgaard v E.ON Climate – J101

- J101 - Det Norske Veritas' international standards;

- $$\tau_{kf} = \frac{\mu E}{K} \left[\frac{\delta}{R\rho} \right]$$

- $\delta = 0.0037$ for rolled surfaces

- $R\rho$ is the outer radius of the pile

- δ is the height of surface irregularities

- Paragraph K 104

- *The design fatigue life for structural components should be based on the specified service life of the structure. If a service life is not specified 20 years should be used.*



Hojgaard v E.ON Climate – Remedial Costs

- €26,250,000

Hojgaard v E.ON Climate – Hojgaard's points

- Technical Requirements are technical not legal
- Such an onerous requirement could not be put in clause 3.2.2.2 (ii) of the Technical Requirements

Hojgaard v E.ON Climate – Answer

- Generally, if an employer specifies or approves a design, the contractor is on risk that it will comply
- δ at 0.0037 was a “Minimum” requirement
- Clause 3.2.2.2 (ii) trumped it
- Hiding onerous legal obligations in technical requirements is fine



Hojgaard v E.ON Climate – Protection

- Contractors
 - Overarching obligation to use reasonable skill and care
- Employers
 - Include obligations to comply with performance criteria