

Newsflash

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SAAMCO and the scope of duty - where to draw the line?

Supershield Limited v Siemens Building Technologies FE Limited [2010] EWCA Civ 7 looked at the interplay between **SAAMCO** and **Hadley v Baxendale**. It should also encourage part 20 defendants to take early settlement opportunities seriously.

A valve in the tank supplying a sprinkler system failed in the basement of a new office building. The tank overflowed. The drains which should have carried away the overflow were blocked with debris. Extensive flooding ensued, causing significant damage to nearby electrical equipment.

The building's occupier and owner (Slaughter & May, and Deka) claimed against the contractor (Skanska) for damages and loss of rent. Skanska in turn claimed against the mechanical and electrical sub-contractor (Haden Young). Haden Young joined its subcontractor, Siemens, who was engaged to supply and install the sprinkler system. Finally, Siemens claimed against Supershield, whom they had engaged to install the system (including the defective valve).

All parties mediated the matter seven years later, in 2008. Siemens settled the claim made against it by Haden Young for 48% of the sum claimed, but maintained its part 20 claim against Supershield for recovery of the settlement monies.

First instance decision – did Supershield have to pay Siemens the settlement monies that Siemens had to pay to settle Haden Young's claim against Siemens?

The central question was whether Supershield was liable to Siemens for the settlement Siemens paid to Haden Young. Had Siemens entered into a *reasonable* settlement? Supershield argued that Supershield was not liable as Siemens' settlement at 48% did not properly take into account Siemens' "*straightforward, strong, and complete*" causation and remoteness defences. Therefore the settlement was not within the range of what was reasonable.

Supershield argued that the blocked drain, not the valve failure, caused the flood. Or, even if the tank's overflow was a partial cause, the escape into the electrical equipment area was too remote a consequence for Siemens to have been liable on a proper application of the rule in *Hadley -v- Baxendale*.

Supershield was found liable on the basis that it failed to carry out the installation with reasonable care. This caused the loss to fall within its scope of duty. The causation and remoteness arguments were rejected because: "*drains do block*".

At the Court of Appeal Supershiel submitted that the first instance judge, Ramsey J, erred when examining the arguments' strengths.

Hadley -v- Baxendale revisited

In the Court of Appeal, Toulson LJ dismissed the causation argument. However he considered that the remoteness issue raised a more interesting point and he considered the interplay between *Hadley and Baxendale* [1843-60] All ER Rep 461 and *South Australia Asset Management Corp v York Montague Ltd* ("*SAAMCO*") [1997] AC 191, 212.

He said the starting point was Alderson B's classic statement in *Hadley -v- Baxendale* that "...the damages which the other party ought to receive in respect of such breach of contract is such as may fairly and reasonably be considered either arising naturally, ie according to the usual course of things, from such breach of contract itself..."

Supershiel submitted that the basement was designed and constructed with drains. The natural course of overflowing water was for it to run away into the drains and sewers. The blocked drains prevented this. Toulson LJ rejected this argument (see below).

SAAMCO, and limitation of the scope of duty

In *SAAMCO*, a lender claimed against a valuer for a negligent valuation. Lord Hoffman considered that any loss suffered as a result of a drop in the property market, although foreseeable, was outside the scope of a valuer's duty. He said that a valuer "*does not undertake the role of a prophet*", and that it was unfair to "*saddle the valuer with the whole risk of the transaction*". The correct approach to measuring loss was to compare the negligent valuation and the correct property value at the time of the valuation.

By way of analogy he gave the example of a mountaineer whose knee is negligently pronounced fit by a doctor. He then goes ahead with an expedition in which some part of his body other than his knee is injured. Lord Hoffman said it would "*offend common sense*" to make the doctor liable, due to the lack of sufficient causal connection.

He also considered that, if, on the proper analysis of the contract against its commercial background, the loss was within the scope of the duty, it cannot be regarded as too remote even if it would not have occurred in ordinary circumstances.

In *Supershiel* Toulson LJ commented on *SAAMCO* and said that although "*it could not be said that a downward movement of the market was unlikely*", the loss from such a fall was not within the valuer's scope of duty. His conclusion was reached by considering the purpose of the contract, and the degree of responsibility which the lender was reasonably entitled to expect of the valuer. Toulson LJ said that *SAAMCO* provided rare authority where damages flowing from a breach were considered not unlikely, and foreseeable, yet fell outside the scope of duty.

Was prevention of the flood damage within the scope of Supershiel's duty?

Toulson LJ considered that Siemens was responsible to Haden Young for installing the valve in such a way that the water was properly contained. Therefore Siemens assumed a contractual responsibility to prevent the water's escape. He said that although the valve's failure was "*very unlikely*" to result in a flood, the valve was the first line of defence against overflow. He agreed with Ramsey J that "*[d]rains do block*" and "*drain pumps malfunction*". Accordingly the loss caused was not too remote. He concluded therefore that prevention of the flood was within the scope of Supershiel's duty and that it was reasonable for Siemens to settle the claim made against it as it did.

SAAMCO's 'exclusionary' and 'inclusionary' effects?

Toulson LJ said that SAAMCO had an 'exclusionary' effect: the contract breaker was held not to be liable for loss which resulted from its breach although some loss of the kind was not unlikely. Interestingly he also said that "*logically the same principle may have an inclusionary effect*": ie there could be loss which is not foreseeable and would not have occurred in ordinary circumstances, yet could fall within the scope of duty of care. It is difficult to envisage such a scenario, which may be, for example, one which arises purely fortuitously. Perhaps this remains to be tested by the courts.

Lessons to Learn

- 1 This case reaffirmed the 'exclusionary' effect of SAAMCO on the scope of duty (ie a contract breaker can be found *not* liable for loss resulting from its breach, even if that loss was not unlikely, and foreseeable). It also hinted that the effect can be 'inclusionary': ie if the loss was within the scope of duty, it cannot be regarded as too remote, even if it was not foreseeable and would not have occurred in ordinary circumstances.
- 2 The case also shows the difficulties for sub-contractor part 20 defendants in trying to wriggle out of paying settlement monies to claimants, by seeking to latch onto the defence of those above them in the chain. A judge only needs to see whether a settlement is within the range of what was reasonable. It would be a tall order for a sub-contractor to persuade a judge that settlement was outside this range, especially in the context of a complex multi-party dispute. Purely from a policy viewpoint if courts were prepared to interfere with such settlements this may discourage parties from settling for fear that they could not recover from those below them in the chain. This is clearly something the courts would wish to avoid.
- 3 It accordingly may be prudent for such part 20 defendants to seriously consider any opportunities to settle early on to avoid a nasty sting in the tail, by being made accountable for another party's settlement later on. Bound up with the settlement could be a monstrous costs element. Siemens settled at 48% (£2,864,080) of the claim. A third of this was for costs – almost £1,000,000.

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