Thiess Pty Ltd and John Holland Pty Ltd v Parsons Brinckerhoff Australia Pty Ltd [2016] NSWSC 173

McDougall J

The Supreme Court of NSW today gave judgment in a case arising from the collapse of the Lane Cove Tunnel. At approximately 1:40am on 2 November 2005, there was a serious roof collapse in a section of the Lane Cove Tunnel, causing significant loss of property and property damage.

Proceedings were commenced by the plaintiffs, a Joint Venture responsible for the design and construction of the tunnel, against four defendants on the basis that those defendants were negligent in their respective roles. The defendants and their roles were: the first and second defendants, who were responsible for the structural design of the works; the third defendant, the geotechnical engineer responsible for monitoring ground conditions in the tunnels; and the fourth defendant, the Independent Verifier appointed to verify the first and second defendant’s designs.

During the course of the hearing, the plaintiffs settled their claims against the first, second and fourth defendants. The plaintiffs’ action against the third defendant alleged that the third defendant breached its contractual obligation to review and report on the adequacy of the designs of the first and second defendants, in the changing conditions of the tunnels. The third defendant denied these allegations. It alleged that the collapse was caused by a failure in design on the part of the first and second defendants, and by the plaintiffs’ negligence in their construction of the tunnels. The Court found that the third defendant did breach its contractual obligation. It found, further, that the plaintiff’s construction work had not been negligent in any relevant way.

The third defendant further contended that any hypothetical breach of its contractual obligations would have had no causal effect. The Court rejected this argument on the basis that it contradicted the primary commercial purpose of their obligations, which was to ensure the project met its design requirements.

The agreed amount of damages, $20.95m, was apportioned between the first and second defendants together, and the third defendant. Both parties were held to be independently liable, and their respective breaches significant. The Court apportioned responsibility to the third defendant for 1/3 of the agreed damages, resulting in judgment against the third defendant in the amount of $6,898,333.00.