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When Cost Assurance Becomes Cost Exposure: IMS Negligence, Conflicts and Distressed Asset Loss in Eiger v Ridge

Eiger Funding (PCC) Ltd v Ridge and Partners LLP [2026] EWHC 609 (TCC)

Mr Adrian Williamson KC sitting as a Deputy Judge of the High Court, 16 March 2026

Key Words

Professional negligence; independent monitoring surveyor (IMS); development finance; construction costs to complete; related-party contracting; target cost and fixed price; conflicts of interest; RICS "Informed Consent"; reliance; SAAMCO scope of duty; "distressed asset" loss; quantum by benchmarking (BCIS). [1–9, 64–67, 68–75, 76–82, 84–91, 92–97, 107–113, 114–119, 126–137, 139].

1. **Facts**
    1. The claimant, Eiger, sought damages for professional negligence against the defendant, Ridge, who practised as Independent Fund Monitoring Surveyors (IMS). [1]
    2. The claim arose from Eiger's decision in November 2018 to make a £12.9m loan to Signature Living Residential Limited to fund completion of a residential conversion and refurbishment development at 60 Old Hall Street, Liverpool. [2]
    3. The loan was secured by a first charge, and the transaction was introduced and promoted by North Wall Capital LLP. [3–4]
    4. On 9 November 2018, Ridge provided a monitoring report ("Report 16"), and Eiger advanced the loan after the report was received, with an IMS report being a condition precedent under the loan agreement. [7, 47, 50–51, 96–97]
    5. The development did not proceed as anticipated, the relevant Signature companies entered administration in April 2020, and Eiger sustained a substantial loss. [6, 53]
    6. The pleaded complaints concerned conflict of interest, project pricing and benchmarking, cost to completion, and risks arising from the relationship between developer and contractor. [8]
2. **Held**
    1. Ridge owed Eiger a duty to exercise reasonable skill and care in relation to the provision of Report 16, whether in contract or in tort. [64–67]
    2. Report 16 was a confusing and unsatisfactory document which confirmed key cost figures without a proper analytical basis and replicated unexplained figures provided by the

developer. [69–70]

3. Ridge breached duty by accepting round-figure remaining-works estimates without adequate investigation and by failing to warn that the developer's costs and costs to complete were materially low against BCIS benchmarking, creating a significant risk of substantial overruns. [72–75]
4. Report 16 suggested a conversion of a fixed price lump sum arrangement into a target cost contract, and Ridge breached duty by failing to advise that this potentially transferred cost-overrun risk onto the funder and required explanation. [77–82]
5. Ridge acted in a clear conflict of interest by "marking their own homework" and failed to obtain Informed Consent in writing as required by applicable RICS conflicts guidance, and that breach was potentially causative in the circumstances of the advice given. [84–91]
6. The court found that Eiger and North Wall Capital did rely on Report 16, including because a satisfactory IMS report was a contractual condition precedent to utilisation of the facility. [92–97]
7. Applying SAAMCO and subsequent authority, the relevant duty was to guard against Eiger entering into a loan made unduly hazardous by inaccurate construction costs and costs-to-complete information, and the loss suffered represented the fruition of that risk. [109–113]
8. The case was treated as a "distressed asset" case in which recoverable loss was suffered when the loan agreement was entered into, because the package of rights acquired was less valuable than Eiger reasonably believed on the basis of the negligent advice. [114–120]
9. Damages were assessed by valuing the risk that completion would be required at open-market prices benchmarked against BCIS data, producing a cost-to-complete figure of £5,416,200 compared with a negligent advised figure of about £2.9m, and yielding damages of £2.5m. [126–137, 139]

3. **Ratio Decidendi**
    1. A professional providing information on which a lender would decide whether to enter a lending transaction owed a duty to exercise reasonable skill and care in the provision of that information where the engagement and reliance were established on the facts. [64–67]
    2. An IMS breached duty where it confirmed a revised construction cost and costs to complete without explaining how the figures were derived or why they were realistic, and where it merely replicated unexplained developer figures without independent analysis. [69–70]
    3. Where the IMS lacked adequate granular information, reasonable skill and care required clear warning that the developer's figures were materially low by reference to objective benchmarks (including BCIS) and that there was a significant risk of substantial additional cost. [72–75, 130–135]
    4. Where the reporting indicated or implied a shift from fixed price lump sum to target cost contracting, reasonable skill and care required explanation of the different risk allocation and warning that cost-overrun risk might be transferred to the funder. [78–82]
    5. Where the IMS had previously acted for the developer on cost appraisals forming the baseline for later advice to the lender, a conflict of interest arose requiring strict RICS Informed Consent procedures, and failure to obtain such consent could be causative where the conflicted position influenced the advice given. [84–91]
    6. Reliance was established where contemporaneous dealings and the contractual structure showed that an IMS report was a condition precedent to lending, and the court accepted

evidence that the report formed part of the decision to proceed. [92–97]

7. On scope of duty, the recoverable loss was limited to the consequences of the information being wrong, and the relevant risk guarded against was entry into a loan rendered unduly hazardous by inaccurate construction cost and cost-to-complete advice. [109–113]
8. Loss was recoverable at inception as a "distressed asset" where the loan rights acquired were less valuable at the date of the transaction because they embedded a material undisclosed risk of cost overrun within the subject matter of the duty. [114–120]
9. Quantum could be assessed by valuing the undisclosed risk through a market-price benchmark (including BCIS) to derive an open-market cost-to-complete figure and comparing it with the negligent advised cost-to-complete figure, producing a recoverable differential. [126–137]

4. **Note on Significance**

The decision treated negligent IMS cost advice as capable of producing immediate inception loss where the lending asset was materially riskier than advised, rather than requiring a full forensic disentangling of all later causes of downstream losses. [114–122]

The court nevertheless proceeded on evidence sufficient to identify a recoverable element within the overall loss, without requiring comprehensive fastidious precision in quantification. [121–125]

Key Takeaway:

1. *This decision is a significant reaffirmation of the standards expected of Independent Monitoring Surveyors advising funders on development risk, emphasising that such professionals must exercise independent judgment rather than act as a conduit for developer optimism. [68–75]*
2. *The judgment illustrates that where granular cost information is lacking, the minimum standard of care requires explicit warning that developer figures are materially low by reference to objective benchmarks, rather than silence or equivocation. [72–75, 130–131]*
3. *It also underscores the importance of explaining contractual risk allocation, particularly where a nominally fixed-price arrangement has in practice evolved into a target cost structure with materially different risk consequences for lenders. [78–82]*
4. *Of wider importance is the court's treatment of loss as arising at the point of entry into the loan, confirming that negligent construction cost advice can render a facility a distressed asset from day one without the need for forensic disentanglement of subsequent project failure. [114–122]*
5. *The case therefore provides authoritative guidance for funders, surveyors and their insurers on scope of duty, reliance, and quantification of loss in development finance negligence claims. [109–113, 126–139]*

Parting Thoughts

This judgment is a brisk reminder that an Independent Monitoring Surveyor is not retained to admire the developer's arithmetic, nod gravely, and staple it into a report. Ridge's problem was not that the project went badly. Projects do that. Buildings, like witnesses, often develop complications once someone starts looking closely. Ridge's problem was that it was asked to provide independent cost assurance to a lender and instead produced a document which, in the court's view, was confusing, analytically undernourished, and far too accepting of Signature's optimistic numbers. Report 16 did not illuminate the risk; it dimmed the lights and invited everyone to proceed carefully into the furniture.

The decision is particularly important because it refuses to let professional negligence in development

finance vanish into the fog of later project collapse. Ridge owed a duty to guard against the very risk that Eiger would enter a loan rendered unduly hazardous by inaccurate construction cost and cost-to-complete advice. That risk materialised. The loan was not merely unlucky in hindsight; it was materially less valuable from inception because it carried an undisclosed cost-overrun risk which proper advice should have exposed.

The court's treatment of loss as a "distressed asset" loss is therefore central. Eiger did not have to perform a heroic archaeological excavation through every later misfortune — administration, delay, defects, market conditions, water ingress, and the rest of the usual construction-law wildlife. It was enough to show that, when the loan was made, the asset acquired was not the asset Eiger reasonably believed it was acquiring. In practical terms, Ridge's negligent advice had smuggled a large cost risk into the transaction at the front door.

The judgment is also unforgiving on conflicts. Ridge had previously acted for Signature on cost appraisals which became part of the very cost history later under scrutiny. When it then advised the lender, it was, in the judge's memorable formulation, "marking their own homework". The absence of proper RICS Informed Consent was not a decorative regulatory footnote. It mattered because the conflict sat directly inside the advice: the £10.2m starting point, the later reduction to £7.614m, and the failure to explain the effect of 2015 pricing in a 2018 market.

Nor did the supposed fixed-price comfort survive examination. Report 16 suggested, without properly explaining, that the contractual structure had drifted towards a target cost arrangement. That is not a minor drafting quirk. It is the difference between the contractor carrying overrun risk and the funder discovering, rather late in the day, that the risk has climbed into the passenger seat and is now choosing the route.

The broader lesson is sharp. Fund monitoring is not passive reporting. It requires independent professional judgment, scepticism, and the courage to say: "these numbers do not stack up." Where granular cost information is missing, silence is not prudence. A properly cautious IMS must say so, and must benchmark, qualify, or warn accordingly. In this case, BCIS benchmarking showed that the developer's figures were materially low, and that a realistic open-market cost to complete could be far higher than the figures being advanced.

For funders, the case confirms that reliance on an IMS report can be real and legally effective even where the report is not lovingly recited in board minutes, especially where the report is a contractual condition precedent to drawdown. For surveyors and insurers, it is a warning siren with paperwork attached: independence must be genuine, conflicts must be managed properly and unexplained developer figures must not be laundered into professional assurance.

In the end, Ridge's liability arose because the report gave comfort where it should have given warning. The damages award of £2.5m reflects the difference between the cost-to-complete risk Eiger was told it was taking and the risk it was actually taking. That is the commercial bite of the judgment. An IMS who reports to a lender is not there to provide a soothing soundtrack ***to a risky loan. It is there to identify the cliff edge before the money accelerates towards it****.*

#TechnologyAndConstructionCourt #TCC #ProfessionalNegligence #IndependentMonitoringSurveyor #IMS #DevelopmentFinance #ConstructionCosts #CostToComplete #BCIS #RiskAllocation #TargetCost #FixedPriceContracts #RICS #ConflictsOfInterest #SAAMCO #ScopeOfDuty #DistressedAsset #ConstructionLaw #ProfessionalAdvisers #LenderRisk #LegalUpdate #CaseLaw #DDAlegal

Authorities

Case Law:

Scope of Duty, SAAMCO, and Recoverable Loss (Primary Analytical Framework)

1. ***South Australia Asset Management Corporation v York Montague Ltd*** [1997] AC 191 — *Cited as the foundation authority establishing that a professional providing information is liable only for the consequences of the information being wrong and not for all downstream consequences of the transaction entered into. [110–111]*
2. ***Hughes-Holland v BPE Solicitors*** [2018] AC 599 — *Relied upon for the modern articulation of the SAAMCO principle and for the proposition that establishing recoverable loss requires demonstrating that the loss fell within the scope of the duty owed. [107]*
3. ***Manchester Building Society v Grant Thornton UK LLP*** [2022] AC 783 — *Applied as the leading modern authority on scope of duty analysis, endorsing a structured approach focused on identifying the risk against which the duty was supposed to guard and determining whether the loss represented the fruition of that risk. [112–113]*
4. ***Meadows v Khan*** [2022] AC 852 — *Cited in support of the analytical framework summarised in Manchester Building Society, reinforcing the step-by-step approach to scope of duty, causation, and recoverability of loss. [112]*

Timing of Loss and "Distressed Asset" Analysis

1. ***Nykredit Mortgage Bank plc v Edward Erdman Group Ltd (No 2)*** [1997] 1 WLR 1627 — *Relied upon for the principle that loss may be suffered at the time of entering into a transaction where the value of the rights acquired is less than believed due to negligent advice, supporting the court's conclusion that the loan was a distressed asset at inception. [117–119]*

Causation and No Automatic Bypass of Proof

1. ***Swindle v Harrison*** [1997] 4 All ER 705 — *Cited for the principle that breach of obligation, including breach of fiduciary or regulatory obligations, does not dispense with the need to establish causation, and that there is no automatic entitlement to damages absent proof of causal loss. [88]*

Approach to Fact-Finding and Witness Evidence

1. ***Gestmin SGPS SA v Credit Suisse (UK) Ltd*** [2013] EWHC 3560 (Comm) — *Cited as authority for the proposition that, in commercial cases, greater weight should ordinarily be given to contemporaneous documentary evidence rather than to fallible witness recollection. [55–56]*

Quantification of Loss Where Precision Is Unavailable

1. ***McGregor on Damages*** *(22nd ed) — Referred to (as secondary authority) for the proposition that difficulty in precise quantification does not bar the court from awarding substantial damages where loss is clearly established and the court can do the best it can on the evidence. [121]*

Legislation:

Professional and Regulatory Standards Governing Independent Monitoring Surveyors (Primary Framework)

1. ***RICS Professional Guidance, UK Lender's Independent Monitoring Surveyor, 1st***

edition (March 2015) *— Relied upon as setting out the core professional obligations of an Independent Monitoring Surveyor, including that the primary duty of care must be owed to the lender, that independence must not be compromised or perceived to be compromised, and that the surveyor should resist acting for the borrower in any capacity. [8(a), 84(a)] The guidance was used by the court to define the applicable standard of professional conduct and to assess whether Ridge's dual role in relation to the developer and lender constituted a breach of duty. [84–87]*

2. ***RICS Professional Standards and Guidance, Global – Conflicts of Interest, 1st edition (March 2017)*** *— Relied upon as the governing regulatory framework for identifying, managing, and disclosing conflicts of interest where a regulated firm undertakes multiple assignments connected with the same transaction. [8(a), 84(b)–(c)] The court relied on this guidance to define "Informed Consent" as a strict procedural requirement, requiring written consent following full disclosure, and concluded that Ridge failed to comply with those requirements. [85–87] The conflict guidance was used to support the finding that Ridge acted in a position of conflict by effectively "marking their own homework" when relying on earlier cost appraisals prepared for the developer. [86–91]*
3. ***Absence of Statutory Authority*** *— No statute or statutory instrument was cited, interpreted, or applied by the court in determining liability, causation, or quantum. The judgment proceeded entirely on the basis of common law professional negligence principles, supported by professional regulatory standards rather than legislative provisions. [64–67, 84–91, 107–139]*

Legal Texts & Commentary:

Damages, Loss, and Quantification in Professional Negligence (Primary Theme)

1. ***McGregor on Damages (22nd edition)*** *— Relied upon for the principle that difficulty or imprecision in quantifying loss does not preclude the court from awarding substantial damages where loss is clearly established and the court can do the best it can on the available evidence. [121] The text was cited to support the court's rejection of the argument that the claimant was required to provide a forensic, blow-by-blow account of all downstream causes of loss in order to recover damages. [121–125]*

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