



**Costain Limited v Charles Haswell & Partners Limited [2009] EWHC B25  
(TCC)  
England and Wales High Court 24 September 2009**

**FACTS:**

Costain Limited (Costain) was a design and construct contractor on a waste water treatment project in the United Kingdom and Charles Haswell & Partners Limited (Haswell) were the designing civil engineers.

Haswell's design turned out to be defective and required substantial rectification and additional works to allow the project to continue. As a result of this additional work Costain were substantially delayed, and sued Haswell for the prolongation costs which it incurred.

**ISSUES:**

Whether Costain was entitled as general site overheads prolongation costs incurred during delay as a result of Haswell's negligent geotechnical advice.

**FINDING:**

The Court while satisfied that there a likely delay as a result of Haswell's advice, it was not satisfied that Costain satisfied the tests required to establish an entitlement to general site overheads as prolongation costs.

**QUOTE:**

Fernyhough QC [at 183 and 184]...

*...if the contractor establishes [a critical delay], he is entitled to an extension of time for completion of the whole project including, of course all those activities which were not in fact delayed by the delaying events at all, i.e. they were not on the critical path...But a claim for damages on account of delays to construction work is rather different. There, in order to recover substantial damages, the contractor needs to show what losses he has incurred as a result of the prolongation of the activity in question...But the contractor will not recover the general site overheads or carrying out all of the activities on site as a matter of course unless he can establish that the delaying event to one activity in fact impacted on all the other side activities. Simply because the delaying event itself is on the critical path does not mean that in point of fact it impacted on any other side activity save for those immediately following and dependant upon the activities in question.*

**IMPACT:**

The case illustrates the need for carefully contract programming and administration, and a contractor's need to carefully present its claim so as to demonstrate (in the event of delays on the critical path) that it has suffered delays on all activities as a result of the delaying event on the critical path.