

Scottish Gas Networks Plc v QBE UK Ltd & Others

Case Ref No: CA56/23

Date of Hearing: Thursday 26 September 2024 at 10.30 (1 day)

Division and Senators: First Division (Lord President, Lord Pentland, Lord Tyre)

Livestreamed Hearing?: Yes No

Agents and Counsel:

Agents / Counsel for the Reclaimers (the appellants) (QBE UK Ltd):

TC Young LLP

Robert Howie KC

Agents / Counsel for the Reclaimers (QBE Corporate Ltd):

Kennedys Scotland

Chris Paterson KC

Agents / Counsel for the Respondents (Scottish Gas Networks Plc):

Addleshaw Goddard LLP

David Thomson KC and Adam McKinlay

Link to Judgment Appealed:

[2024csoh15-scotland-gas-networks-plc-against-qbe-uk-limited-and-another.pdf](#)

[\(scotcourts.gov.uk\)](#)

Case Description:

This is a reclaiming motion (appeal) from the commercial judge's decision to allow Scottish Gas to go to proof (an evidential hearing) on its claim against the QBE companies.

Scottish Gas own a high pressure pipeline between Glenmavis and Letham Moss.

The pipeline serves around 600,000 homes and businesses. It previously ran through Cowdenhill Quarry, near Kilsyth. Between 13 October 1999 and 11 November 2011, the quarry was leased to Skene Group Limited. Skene carried out quarrying operations at the site.

On 29 June 2011, as part of routine, fortnightly inspections, Scottish Gas carried out an aerial inspection of the site. The inspection revealed that there had been a landslip at the quarry. The rock between the face of the quarry and the pipeline had fractured, creating instability in the rock bed and space between the pipeline and the rock face. This left the pipeline inadequately supported. Some of the surrounding land had been damaged or destroyed, meaning that it was no longer possible to access the pipeline to carry out routine maintenance, inspection and repair. It was assessed that the face of the quarry would probably collapse in time. If the pipeline remained in place when that happened, it was likely to buckle or rupture, which would risk a major escape of gas, posing severe danger to life and

limb, and for the maintenance of the gas supply to the customers served by the pipeline. The pipeline required to be diverted away from the quarry.

Scottish Gas contend that, during their investigation of the situation, they discovered that Skene had been undertaking quarrying operations beyond the permitted area. Blasting work undertaken by Skene had caused the rock fractures. Scottish Gas raised an action in the Court of Session for £3 million against Skene, which was the amount incurred in connection with the work involved in diverting the pipeline. On 14 June 2017, Skene was placed in liquidation. They remained in liquidation until their dissolution on 8 January 2020. On 15 November 2017, the court pronounced decree by default for the £3 million sought, under Rule of Court 20.1, as a result of the failure of the liquidator of Skene to appear at the By Order hearing which called that day.

Scottish Gas then raised the present action against QBE, as the insurers of the now-insolvent Skene. They seek payment from QBE of the sums that they say QBE would have been due to pay to Skene by way of indemnity under Skene's insurance policy, for the £3 million liability to Scottish Gas. Their action is brought against QBE under the Third Parties (Rights against Insurers) Act 2010.

QBE contend that decree by default, as opposed to a decree pronounced after the court had considered the merits of Scottish Gas' claim against Skene, is not sufficient to establish liability in terms of the 2010 Act. The commercial judge rejected this argument.

The First Division will hear the appeal on Thursday 26 September 2024.