

MEDIA SUMMARY – JUDGMENT DELIVERED IN SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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Status: IMMEDIATE

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

ALLIANZ INSURANCE Ltd v RHI REFRACTORIES AFRICA (Pty) Ltd [2007] SCA (RSA)

Today the Supreme Court of Appeal dismissed with costs an appeal by Allianz Insurance Limited against the judgment and order of the Johannesburg High Court granted in favour of Refractories Africa (Pty) Ltd. In June 2001 Refractories Africa, a contractor, entered into a written construction agreement with a third party called Ocean Fertilizer (Pty) Ltd whereby Refractories Africa carbon-bricked and acid-proofed the lining of cooling towers belonging to Ocean Fertilizer in the Richard Bay area. The purpose of the undertaking was to insulate and protect the concrete surface of the towers against the ravages of the acid content of the circulating water and the presence of acid vapours in the air.

During the course of Refractory Africa carrying out the work the material used, called epoxy lining, applied by Refractory failed to stick to the surface and delaminated or peeled off which required the insulation to be redone.

Allianz Insurance rejected Refractory Africa's claim claiming that the aforesaid adhesion material used for the lamination had a manufacturing defect and that

Refractory Africa was disqualified from indemnification because the clause in the insurance policy excluded “unintended damage”.

The Supreme Court of Appeal rejected this defence by Allianz Insurance on the basis that interpreting the expression “unintended damage” in its proper context shows that the insurance contract refers to damage to the entire property (the cooling towers) and that the said epoxy lining material was not expressly excluded in terms of the exclusion clause.