

# Decommissioning Insurance:

## Platform Owners & LOGIC's General Conditions

This article considers a potential exposure for platform owners in relation to the Insurance clause in Oil & Gas UK's LOGIC General Conditions of Contract for Offshore Decommissioning (Edition 1 December 2018)



### Introduction

In recent years, offshore platform dismantling and removal risks have increased in frequency for operators and their joint-venture partners.

The application of the provisions of the contract with the heavy lift contractor are central to ensuring platform owners have appropriate insurance coverage in place during the dismantling and removal exercise.

Historically, the contracts between the platform owners and the heavy lift contractors have been bespoke documents, negotiated on a project by project basis. However, over the past 18 months, certain industry bodies have sought to introduce standardised contractual provisions

for platform dismantling and removal activity. One such example being Oil & Gas UK's LOGIC General Conditions of Contract for Offshore Decommissioning.

For platform operators and their joint-venture partners, it is essential that the insurance provisions of these new, standardised, contracts are carefully analysed in order to ensure they equitably reflect the intentions of the platform owners. In this respect, we now analyse what many platform owners may consider to be an anomaly within the insurance provisions of the LOGIC General Conditions of Contract for Offshore Decommissioning.

### LOGIC

The *Insurance by Contractor* clause in the aforementioned LOGIC contract provides that "*all insurances (including insurances provided by SUBCONTRACTORS) other than Employers' Liability Insurance / Workmen's Compensation, to the extent of the liabilities assumed by the CONTRACTOR under CONTRACT, include the COMPANY, CO-VENTURERS and its and their respective AFFILIATES as additional assureds.*" (Emphasis added.)

However, the *Insurance by the Company* clause does **not** contain a corresponding restriction limiting the Contractor's access to the Company's insurances to the extent of the liabilities assumed by the Company under contract.

*Inter alia*, the Contractor is required to arrange Protection & Indemnity Insurance including wreck & debris removal in respect of all vessels, craft and floating equipment. Whereas the *Insurance by the Company* clause in the LOGIC contract requires the Company to arrange "*Decommissioning All Risks Insurance*". However, the clause also requires the Contractor, Subcontractors and their respective Affiliates to be included under the "*Decommissioning All Risks Insurance*" as additional assureds on the same terms as the Company. The clause further stating that the Contractor, Subcontractors and their respective Affiliates are to enjoy the benefit of blanket subrogation waiver rights.

For the purpose of providing further clarification, Guidance Notes accompany the LOGIC conditions. In relation to the *Insurance by the Company* clause, the Guidance Notes expressly refer to a desire, on the part of the Contractor, to avoid any double insurance. Furthermore, the Guidance Notes expressly state that it is generally assumed that the *Decommissioning All Risks Insurance* will provide cover in respect of the risk of negligence on the part of the Contractor.

In respect of the critical heavy lift phase, at the offshore location, the LOGIC contract already holds the Contractor harmless in respect of any residual value in the infrastructure and any removal of wreck liabilities relating to the platform being dismantled.

Accordingly, during this critical phase of the project, in seeking cover under the Company's policy, for their own negligence, it would appear the main exposure the Contractor brings to bear on the Company's policy is the removal of wreck risk in respect of the heavy lift vessel.

Whilst the Contractor is required to arrange Protection & Indemnity Insurance (including removal of wreck cover in respect of the heavy lift vessel), it should be noted that the Contractor also expressly wishes to avoid any double insurance when requiring the Company's project specific *Decommissioning All Risks Insurance* to cover the Contractor in respect of their own negligence.

Therefore, it would appear that the Contractor is seeking primary Liability coverage under the platform owner's insurance programme. Even if it was held that double insurance did exist (rather than primary cover), at English Law the Contractor may be entitled to claim in full under the platform owner's policy and leave the platform owner's underwriters to seek a contribution from the Contractor's own insurers. (Section 32(2) Marine Insurance Act 1906).

It will be recalled that the Contractor expects access to the Company's *Decommissioning All Risks Insurance* even if the Contractor has assumed responsibility for the insured exposure via the Indemnities section of the contract.

## Comment

It would appear, that in drafting their General Conditions of Contract for Offshore Decommissioning, Oil & Gas UK has sought to adopt a similar stance to their approach to contracting in relation to offshore construction projects. Namely, that the Contractor shall enjoy access to the Company's (i.e. platform owner's) project specific insurance policy.

However, the aforementioned approach to decommissioning cover overlooks the fact that dismantling and removal exposures are fundamentally Liability risks so far as insurance coverage is concerned. (Due to the low residual value of the property being removed.) Whereas offshore construction risks are fundamentally First Party Property Damage risks so far as insurance coverage is concerned.

Accordingly, adding the Contractor to the Company's Offshore Construction First Party Property Damage policy does not fundamentally change the exposure so far as underwriters are concerned. However, granting the Contractor access to the Company's Liability focussed Offshore Decommissioning policy does fundamentally change the exposure so far as underwriters are concerned. Especially as the vessel Contractors already have their own annual Liability insurance programmes in place.

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Furthermore, granting the Contractor such unfettered access to the Offshore Decommissioning policy will expose the platform owner to a potentially greater loss record, with punitive premium implications in respect of future projects.

In this respect, it should be noted that whilst the platform operator controlled, market standard, Offshore Construction policy form WELCAR 2001 grants Contractors a degree of access to the First Party Property Damage section, the wording expressly **excludes** vessel Contractors from accessing the Liability section of the insurance contract.

Therefore, in advance of projects commencing, platform operators and their joint-venture partners may wish to consider their intentions regarding Contractor access to the platform owner's Offshore Decommissioning policies.

### **Captives & Company Indemnities**

The apparent imbalance in insurance responsibilities may create further difficulties and potential exposures for platform owners should they intend to engage their Captive insurers to underwrite the risk.

It should also be noted that the LOGIC Conditions provide platform owners with the option of meeting their insurance responsibilities via a Company indemnity rather than by arranging a Decommissioning All

Risks insurance policy. Clearly this would further increase the exposure to the platform owners created by the above detailed imbalance in insurance responsibilities.

### **Further Details**

In addition to advising and representing oil & gas policyholders in respect of insurance claims, Trident also review and pressure test policy wordings.

The Directors at Trident have arranged insurance coverage for some of the largest and most complex offshore decommissioning projects conducted to date. Our team members were also responsible for designing and negotiating the first Offshore Dismantling & Removal policy wording to be underwritten in the London insurance market.

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June 2020



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