

Platform Stability Risks

This article, which looks at two cases in relation to platform stability risks and latent defects, may be of interest to owners of offshore infrastructure.



Introduction

The risk of platform instability represents an example of a low frequency, high severity exposure faced by owners of fixed offshore oil & gas platforms.

Despite case law & express policy terminology existing that provides favourable coverage in respect of platform stability risks, many operational Physical Damage policy wordings restrict such cover.

The Siri Platform

The case of the Siri platform provides an example of the potential severity of such platform stability risks. In 2009 cracks were discovered in the structure of the Siri platform, a fixed platform situated in the North Sea. Noreco Oil Denmark A/S ("Noreco") held a 50% interest in the Siri platform and insured their

interest under an upstream oil & gas operational Package Policy wording. Whilst the risk was underwritten at Lloyd's of London, with supporting capacity from within the Companies market, the policy coverage dispute between underwriters and Noreco was heard before the Danish courts and was considered in accordance with Danish law.

Prior to the commencement of court proceedings, Noreco's underwriters primarily denied coverage based upon the assertion that the cause of the loss was a fault in design. In accordance with standard market wordings, Noreco's insurance contract expressly excluded the cost of repairing or replacing any part of the subject-matter insured that contained a fault in design and the like. Underwriters' assertion being that the damage sustained by the support structure, containing

the alleged fault in design, had not spread and caused consequential damage to other sound parts of the platform. During the court proceedings, insurers' line of defence was expanded to include issues such as gradual deterioration and the appropriate periods of insurance.

The court of first instance found in favour of Noreco. However, the appeal court dismissed Noreco's US\$470 million claim for repair costs, lost production income and associated sums of interest. Instead, Noreco was awarded US\$12 million in relation to sue & labour expenditure. In particular, the appeal court applied the Danish law "occurrence" (causation) approach to coverage and held that the occurrence of the physical damage was at a time before the inception of the policies under consideration.

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The case of the Siri platform highlights the potential absence of coverage under many platform policies for repair and replacement costs in respect of physical damage sustained by subject-matter insured containing a latent defect.

The case of the Siri platform also highlights the fact that an absence of coverage under the Physical Damage section of the policy can be particularly acute if such cover is being relied upon to trigger a claim under the Business Interruption (Loss of Production Income) section of the policy.

The Nukila Platform

The absence of cover experienced in the Siri case would be addressed by policy terminology expressly granting coverage in respect of physical damage sustained by the subject-matter containing the latent defect. Especially if such policy terminology (and the law and practice of the policy) ensured that claims were recoverable under the policy in operation at the time such misfortune came into existence. In this respect, the English law Court of Appeal case of *Promet Engineering (Singapore) Pte Ltd v Sturge & Others (1997) 2 Lloyd's Rep 146* merits attention.

The case of *Promet Engineering (Singapore) Pte Ltd v Sturge & Others* involved fatigue cracks in the legs of the Nukila offshore accommodation platform, resulting in extensive

fractures which meant that the platform was in danger of collapse.

The Court of Appeal held that there had been damage to the subject-matter insured, that the damage had occurred during the period covered by the policy and that the damage was caused by latent defects in the subject-matter insured. The latent defects being wrongly profiled welds and incipient fatigue cracks.

The policy coverage was based upon the Institute Time Clauses – Hulls (1983). In particular, the standard Institute Time Clauses – Hulls (1983) provide that the “insurance covers damage to the subject-matter insured caused by any latent defect in the machinery or hull”.

Significantly, the Court of Appeal held that the aforementioned policy terminology afforded coverage in respect of damage sustained by the subject-matter containing the latent defect. The claimant did not have to go so far as to demonstrate consequential damage to other sound parts of the platform.

Progressive Damage

In the case of the Nukila platform it was held that the extensive fracturing caused by the latent defects took place during the one single policy period under consideration. However, it can sometimes happen that a latent defect will cause damage and such damage will cause further damage,

until by a natural progression it becomes manifest.

If “progressive damage” is a possibility the claimant, at the earliest possible opportunity, should notify underwriters participating in all potential policy years of account. If the facts ultimately demonstrate “progressive damage” the claimant will have protected their position and, if necessary, the opportunity will exist to apportion the “progressive damage” over the policies concerned.

September 2021

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