

Offshore Construction Insurance: Coverage Without Damage



This article considers certain coverage scenarios under an Offshore Construction policy form that can be overlooked if a policyholder is faced with an occurrence that does not involve physical damage to the project property.

The WELCAR 2001 Offshore Construction Project Policy is the standard policy form upon which most underwriters will provide coverage for offshore oil & gas platform and pipeline construction risks.

Prior to the advent of the WELCAR 2001 policy form, certain Offshore Construction policy wordings provided a degree of “defect without damage” cover. Such coverage being provided via the Perils clause of the Institute Clauses for Builders’ Risks (1988). The Institute Clauses for Builders’ Risks (1988) being incorporated into the Offshore Construction policy wordings.

The WELCAR 2001 policy form continues to incorporate the Institute Clauses for Builders’ Risks (1988). However, the drafters of the WELCAR 2001 policy form expressly amended the Perils clause so as to ensure that coverage for repair or replacement of insured project property must be triggered by physical damage being sustained by such property.

However, the WELCAR 2001 policy form still provides coverage in various circumstances where an insured peril results in the policyholder incurring extraordinary expenditure absent of any physical damage being sustained by the insured project property. This article examines the basis for such coverage.

Sue & Labour Clause

The WELCAR 2001 policy form contains a Sue & Labour Clause which expressly provides cover for reasonable expenditure incurred by the Assured in attempting to avert or minimise physical loss of or physical damage to the insured property.

Accordingly, the aforementioned actions may have been entirely successful and averted any damage whatsoever to the insured property. Despite the absence of any damage to the insured property the policy would still be expected to respond to the reasonable expenditure incurred by the Assured.

The Assured’s entitlement to a recovery under the policy is determined by how close to danger the insured property must be in order to trigger the Sue & Labour coverage. The Sue & Labour Clause

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in the WELCAR 2001 policy form expressly requires the physical loss or physical damage to be "*imminent*". In this respect, it should be noted that case law exists, which is favourable to the claimant, with regards to Sue & Labour coverage and how immediate the danger to the insured property needs to be. It should also be noted that alternative Sue & Labour Clauses are available that do not contain an express requirement for physical loss or damage to be "*imminent*".

Slip policies, employed by broking houses to place the Offshore Construction risks with the underwriters, ordinarily expressly state that expenditure incurred in suing and labouring shall be recoverable without the application of the policy deductible. Even in the absence of such terminology, statutory grounds exist to contend that coverage afforded by a suing and labouring clause shall be payable without the application of the policy deductible.

Forwarding Charges Clause

The WELCAR 2001 policy form expressly includes coverage in respect of cargo in transit. It has long been established that in the case of cargo insurance the thing which is insured is not just the cargo but also the arrival of the goods at the insured destination i.e. it is the "voyage" of the cargo or the "adventure" that is insured.

Where there is a potential loss of adventure, there is a duty on the Assured to sue and labour. In practice, this relates to expenses being incurred to forward the cargo to the intended destination because the insured transit has been terminated. This particular form of sue and labour expense is

recoverable under a Forwarding Charges Clauses.

The Forwarding Charges Clause will respond to the aforementioned expenses relating to the potential loss of the adventure even though the cargo is undamaged.

The WELCAR 2001 policy form incorporates the Institute Cargo Clauses (A) (1982) and these Clauses include a Forwarding Charges Clause. Interestingly, the main body of the WELCAR 2001 policy form also includes a Forwarding Charges Clause which takes precedent and imposes a sub-limit on the coverage.

Certain underwriters are prepared to provide coverage in accordance with the Forwarding Charges Clause in the Institute Clauses i.e. without the application of a sub-limit. Such underwriters are also prepared to incorporate the Institute Cargo Clauses (A) (2009) into the Offshore Construction policy form. The 2009 version of the Clauses provide the Assured with more favourable coverage compared with the 1982 Clauses, including in relation to the insolvency or financial default of vessel owners and the like. Such insolvency and financial default being a potential point of debate, depending upon the circumstances surrounding the insured transit terminating short of the intended destination.

For the sake of good order, in the event of the insured transit terminating short of the intended destination, it is important for the Assured to promptly notify underwriters and obtain their agreement to ongoing coverage.

Additional Work Clause

The WELCAR 2001 policy form includes an Additional Work clause. The coverage provided by the Additional Work clause, which is sub-limited, includes the additional cost of positioning, repositioning, sinking, submerging and stabilising insured property caused by an insured peril.

For example, contractor negligence or conditions of the sea, whilst not damaging the project property, may result in additional expenditure being incurred in positioning the insured property. Such coverage would also encompass piling activity.

However, placing a platform or structure at the wrong location (as opposed to an error in positioning at the correct location) is expressly excluded under the standard WELCAR 2001 policy form.

Site Preparatory Work

Coverage under the WELCAR 2001 policy form expressly includes the cost of site preparatory work lost or expended as a result of an insured peril during the policy period.

Historically, such coverage has been particularly relevant to pipeline risks. For example, the project may include a new pipelay and a third party vessel may sink during the policy period. The wreck of the vessel may be interfering with a seabed site where a new pipeline is due to become operational, resulting in the Assured having to incur additional expenditure in respect of site preparatory work.

However, as the approach to installing infrastructure offshore continues to evolve, the width of coverage available in respect of site preparatory work should not be overlooked.

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Failure to Launch

In the event of a failure to launch, the WELCAR 2001 policy form will provide coverage for all subsequent expenses incurred in completing the launch. Such coverage does not require physical damage to have been sustained by the insured property.

In recognition of the various different types of subject-matter insured under an Offshore Construction policy, the WELCAR 2001 policy form provides a broad definition of the word "launch".

Offshore Costs / Offshore Cancellation Costs Clause

Whilst not part of the standard policy form, underwriters subscribing to the WELCAR 2001 policy will routinely agree to add an Offshore Costs Clause or Offshore Cancellation Costs Clause to the insurance contract. (The Offshore Costs Clause ordinarily providing broader coverage than the Offshore Cancellation Costs Clause.)

Both clauses seek to address an obligation, on the part of the platform operator and their joint-venture partners, to meet the cost of extended periods of vessel hire in respect of vessels in the construction fleet that have to stand down due to an insured occurrence.

Ordinarily, such coverage will involve vessels in the construction fleet that are not actively involved in repairs but which have to stand down whilst repairs to damaged insured property are being carried out.

However, depending upon the terminology of the Offshore Costs Clause / Offshore Cancellation Costs Clause, the trigger to coverage may be "a peril insured against giving rise to a claim under this Policy". If so,

then grounds exist to contend that the trigger to the additional vessel cost coverage need not be physical damage to the project property. For example, any of the scenarios outlined in the preceding sections of this article could result in the platform operator facing extended periods of vessel hire absent of any damage to the project property.

Constructive Total Loss

The possibility exists that the Assured may be deprived of possession of undamaged insured property due to a peril insured against and as such they could seek to progress a claim under the policy for a constructive total loss. (Section 60(2)(i) of the Marine Insurance Act 1906).

Delay in Start Up

The coverage afforded by the WELCAR 2001 policy form, in respect of damage to insured project property, expressly excludes loss of use and delay in start-up.

However, certain underwriters will consider providing Delay in Start-Up (DSU) cover, should the platform operator consider a consequential loss exposure exists. Such underwriters may be prepared to consider additional triggers to the DSU coverage beyond physical damage to the project property. For example, the Assured may consider a potential exposure exists in the event that the project is delayed due to damage to non-owned property.

Accordingly, absent of physical damage to the project property, DSU coverage could be triggered by damage to non-owned property such as onshore construction equipment and specialist offshore vessels.



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Further Details

Please do not hesitate to contact Trident, should you wish to discuss any of the issues raised in this article. Our team has many years experience advising policyholders in respect of Offshore Construction coverage.

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