

Offshore and Hydrographic Wire

Offshore professionals operate in diverse areas.

These include: seismic, hydrographic and geophysical surveyors; designers and naval architects of oil rigs, drill ships or FPSOs; design and engineering of subsea structures and equipment; marine mammal observers and environmental consultants; supply of crew and consultants; design and consultancy of wind farms and other renewable energies.

ITIC has been insuring these professionals for over 20 years and in this time ITIC has paid or defended many claims. This special edition of the Wire focuses on some of these.





A series of unfortunate events

An offshore surveying firm signed a contract with an oil company, for the provision of geophysical surveys and geotechnical surveys over certain gas fields.

The gas extraction in that field had been interrupted some time before and the oil company was looking at re-starting extraction and further developing the field. The purpose of the survey was to provide an assessment on the condition of the seabed and fields before new drilling operations could commence.

During the provision of the surveys several events occurred, delaying the commencement and completion of the services by approximately 281 days.

The oil company claimed that the delay was caused by, amongst others, failure of equipment, issues with the ships that had been chartered by the surveyors, defective work,

and non-completion of obligations and rectifications.

Therefore, it was clear that some delays claimed were not caused by the negligence of the surveyor, for example, those caused by operational issues with the ships or delays caused by bad weather. However, some delays were caused by the negligence of the surveyor and/or their subcontractors, for example failure to ensure the correct equipment was on board the vessel.

Furthermore, the contract contained a liquidated damages clause, which capped the surveyor's liability for delays at 10% of the contract price (approx. US\$ 900,000). Originally, the claimant viewed all the delays as one event and claimed one cap. However, they subsequently advised that they were entitled to claim under three separate limitation caps of US\$ 2,700,000. **The claim eventually settled at US\$ 1,200,000. This was covered by ITIC.**

Setting out for a claim

A hydrographic surveyor member of ITIC also carried out land surveys. They were contracted to set-out a shore entry point of a subsea power cable. The setting out of the entry points was done successfully. They were also required to do the same for the horizontal directional drilling (HDD) rig and its anchor points. They requested the design plan from the contractor in AutoCad format to do so. However, they were only provided with a PDF. The surveyor therefore calculated manually the HDD rig and the anchor points in relation to the entry point.

The anchor points should have been calculated in relation to the drilling entry point, but unfortunately it was calculated off the power cable entry point. Therefore, they set out 18 sheet piles 8 metres in the wrong direction. This was spotted by the lead contractor but only after the sheet pile was installed. The contractor lost 2.5 days of drilling time whilst the situation was rectified.

The contractor submitted a claim for US\$ 60,000 which was the lost drilling time and the cost to move the sheeting. ITIC assisted the surveyor by negotiating this down to US\$ 30,000 as a proportion of the contractors costs were fixed.



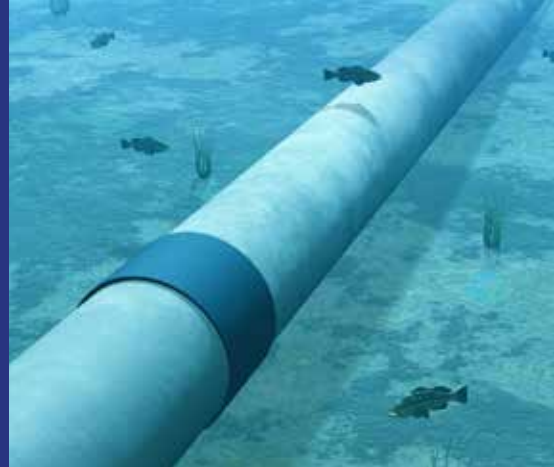
Subsea telecommunication cable

A consultant was engaged to notify all interested parties along a route of a new telecommunications cable. The consultant did this in accordance with its principal's instructions. However, whilst laying the cable, the ship dragged its grapnel across the submarine transmission cable, which took power from the wind farm to the shore. A significant sum in damages was sought, including direct damages and consequential losses.

Court proceedings were brought directly against the ship owner. Although, the consultant carried out their role without fault, they were named in the proceedings as a joint defendant.

Luckily the consultant had cover in place with ITIC, who paid for the legal defence.

ITIC was also on hand to offer expert advice. However, it shows that you do not need to be negligent to have a claim made against you.



Resample required

As part of a pipeline project a surveyor carried out geotechnical sampling which required the collection of samples at numerous stations. Unfortunately the surveyor did not follow proper procedures in handling some of the core samples for laboratory tests.

The surveyor had to re-collect a quarter of the samples. To do this a barge, tug and crane had to be chartered from a 3rd party and an independent lab technician was employed to supervise the further sample handling.

ITIC paid the costs of the re-collection of the data, which amounted to US\$ 100,000.



Jack-up barge punches through sandy bottom

An offshore consultant performed a site assessment for a jack-up crane barge. The site was known to have some inherent difficulties for jack-up operations due to the underlying layer of soft clay which could potentially lead to a "punch-through" of one of the jack-up's legs.

The offshore consultant's report clearly highlighted this hazard. Ten days after the site assessment the barge went onsite and suffered a punch-through. The legs of the barge penetrated due to the effects of scour. A year later the owner of the jack-up barge brought a claim of US\$ 1.75 million against the consultant, arguing the consultant did not consider the effects of scour.

The claim was rejected on the basis that (a) the report clearly showed there was a danger of punch through, (b) the barge had been shifted away from the site which had been assessed, (c) at that site the owner had failed to carry out proper pre-loading checks, particularly in relation to the danger of a punch-through, and (d) in the scope of work the consultant was never asked to consider the effects of scour.

The consultant's position was considerably strengthened by a detailed scope of work and a well written report. **ITIC often deals with claims in which a consultant is exposed to a claim because one of these documents is insufficiently clear. The legal costs to defend the consultant amounted to US\$ 100,000.**

Hydrographic howler

A hydrographic surveyor was appointed to conduct a survey for a harbour authority. The surveyor made a mistake taking the readings as they had not allowed for the depth of the transducer on the survey vessel. A total of three data sets were taken, each containing the same error. This resulted in the readings showing half a metre too little and the harbour authority restricted access to the harbour for certain seagoing vessels.

Fortunately, the parties involved were able to reach an amicable solution instead of bringing a claim against the surveyor.

It is very unusual for such issues to be resolved so harmoniously and more often than not ITIC has to get involved, whether to preserve commercial relationships, or in order to support members through the litigation process.

Patent problems

An offshore engineering firm was engaged by the head contractor engaged in the construction of an offshore windfarm to design a subsea pile template (“SPT”) to be used to assist in the driving of piles into the sea floor.

The engineering firm designed the SPT and it was being used in the construction of the windfarm when the firm received notice from a competing firm of engineers alleging that they held a European patent in respect of the piece of equipment and that the SPT infringed their patent.

The competing firm subsequently issued legal proceedings in which they claimed damages of US\$ 2 million for the alleged infringement. They named the engineering firm, the head contractor and the end user in those proceedings.

The contract between the engineering firm and the head contractor included an indemnity in favour of the head contractor and the end user. This provided that the engineering firm was responsible for legal costs incurred in defending a claim arising out of the alleged breach of a

third party’s intellectual properties. This type of indemnity is a common provision in such contracts.

Counsel’s advice was sought. The barrister concluded that there was a more than 50% likelihood that the engineering firm would be found to have not infringed the patent, and further that was a more than 50% chance that a court would find the claimant’s patent to be invalid due to a lack of novelty.

Nevertheless it was clear that there remained a significant risk associated with allowing a trial to proceed. In addition patent disputes are expensive to litigate partly due to the expert evidence required. Discussions took place with a view to settling the claim.

The claim was ultimately resolved with a contribution towards the claim for damages of US\$ 250,000 and on terms which included a licence providing for the engineering firm to be able to continue to use the SPT in question. The legal costs incurred amounted to another US\$ 250,000.

Contract checklist for offshore professionals

Whenever you are appointed by a client, you must make sure that the terms of your appointment are recorded in your contract. It is usual for such a contract to be in various parts.

For example, you should have your own general Terms & Conditions on which you will always contract. See ITIC’s standard Terms and Conditions for hydrographic surveyors at: <https://www.itic-insure.com/knowledge/itics-standard-terms-conditions-for-surveyors-consultants-5765/>

General Terms & Conditions will be suitable for every contract you enter into as they will be very general by nature. The more specific requirements of the contract, such as detailing the scope of the services you will provide will be recorded in a “Scope of Work”. In such a document you should detail all the works you are prepared to undertake. You should also pay special attention to any work which is not going to be undertaken by you, but which your client could reasonably assume would be.

If it is reasonable for a lay client to assume you would be undertaking a task and they relied on that assumption, you could be held to have a liability for non-performance.

Key issues for you to consider, are:

- exclusion and limitation clauses
- jurisdiction and law
- time bars
- indemnity
- force majeure
- and the right to sub contract.

Whenever you intend to enter a contract your Terms and Conditions should be made clearly available to your potential client before the contract is agreed (and preferably signed). It is extremely difficult, if not impossible, to rely on contractual clauses which were not brought to a client’s attention before they agreed to enter into the contract.

The only time you may be able to rely on such clauses is if you have a previous course of dealing with that same client and have used such clauses in the past – so in effect, the client is aware of them.

See more online at [itic-insure.com](https://www.itic-insure.com)

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