



MYTHBUSTING DSU CLAIMS

1. INSURERS RARELY PAY DSU CLAIMS

Claims are paid as Integra Technical Services and Insurers can testify. However, and for different reasons, the settlement does not always meet the Insured's expectations, for example:

1. Insured vs uninsured delay;
2. Problems ascertaining the critical path;
3. Deductible period (time or monetary) and there maybe multiple deductibles if further periods of cover have been purchased;
4. Defects clauses and concurrency of critical path for the repair of defects or improvement to the original design;
5. Indemnity payments not due until the indemnity period starts, even if the delay happens early in the life of the project.

2. POLICIES PAY OUT IF THE PROJECT IS LATE

Technically yes, as the project has to be late to trigger a claim, but this has to be the result of an insured property damage event.— it is not a 'catch all' policy to cover all delays, for example poor project management, labour strikes, shortage of materials etc.

The 'scheduled date of commencement' of the project, or similar term defining commercial start up, has to be missed. It is common for this not to be defined adequately for DSU claim investigation purposes, or to coincide with the definition of the contractual completion trigger.

3. THE INDEMNITY PERIOD STARTS FROM THE SCHEDULED DATE OF COMMENCEMENT INCLUDED AT INCEPTION

It is essential to clarify what determines the 'scheduled date of commencement' e.g. percentage of throughput of materials in mines, percentage of efficiency of power generation.

Without reference to production it is possible for a project with more than one revenue stream to be in partial production before the project has been finally completed.

4. INSURERS CAN OFFSET LIQUIDATED DAMAGES (LDs) AGAINST THE DSU CLAIM

LD claims are rarely straightforward and usually contested. If the Project Owner is receiving LDs under the contract, then there would be a degree of double insurance or cover in place.

As a consequence, we see LDs often forming part of a negotiated settlement, depending upon the DSU policy language (Debt Service or Gross Profit) and the contractual terms.

5. PAYS FOR MITIGATION EXPENSES DURING THE CONSTRUCTION PHASE

Mitigation expenses can be incurred under both Section 1 by the Contractor and the DSU section of the policy by the Project Owner or Employer (increased cost of working (ICOW)).

All parties need to be able to distinguish between time and acceleration cover for the Contractor and ICOW for the Project Owner or Employer.

6. PROJECT MONITORING MAKES CLAIMS EASIER

Pre-incident monitoring can reduce the time needed to accurately determine the status of the project at the time of a physical damage event and provide greater certainty about the effectiveness of ICOW expenditure.

Insureds are likely to get earlier feedback from their Insurers on the application of the DSU policy to the delay they have experienced if there is general agreement as to the progress, at the time of an insured physical damage event.

7. COVERS ALL THE LOSSES THAT OCCUR DURING THE INDEMNITY PERIOD

DSU policies cover losses which are correctly indemnifiable. If there are number of indemnifiable losses in the project period and the project is not completed until after the 'scheduled date of commencement', then the DSU claim is the cumulative effect of all of the adjusted indemnifiable losses on the project.

As such there can be only one DSU claim per project, unless further cover is purchased to provide additional periods of indemnity.

Integra Technical Services have successfully settled DSU claims with a combined settlement value in excess of USD500 million, with the single largest being over USD150 million. This insight into DSU has been taken from a Zurich Global Corporate UK Construction Insurance Webinar that was presented by Integra Technical Services' Adam Humphrey and Zurich Global Corporate UK's Jonathan Sargent.