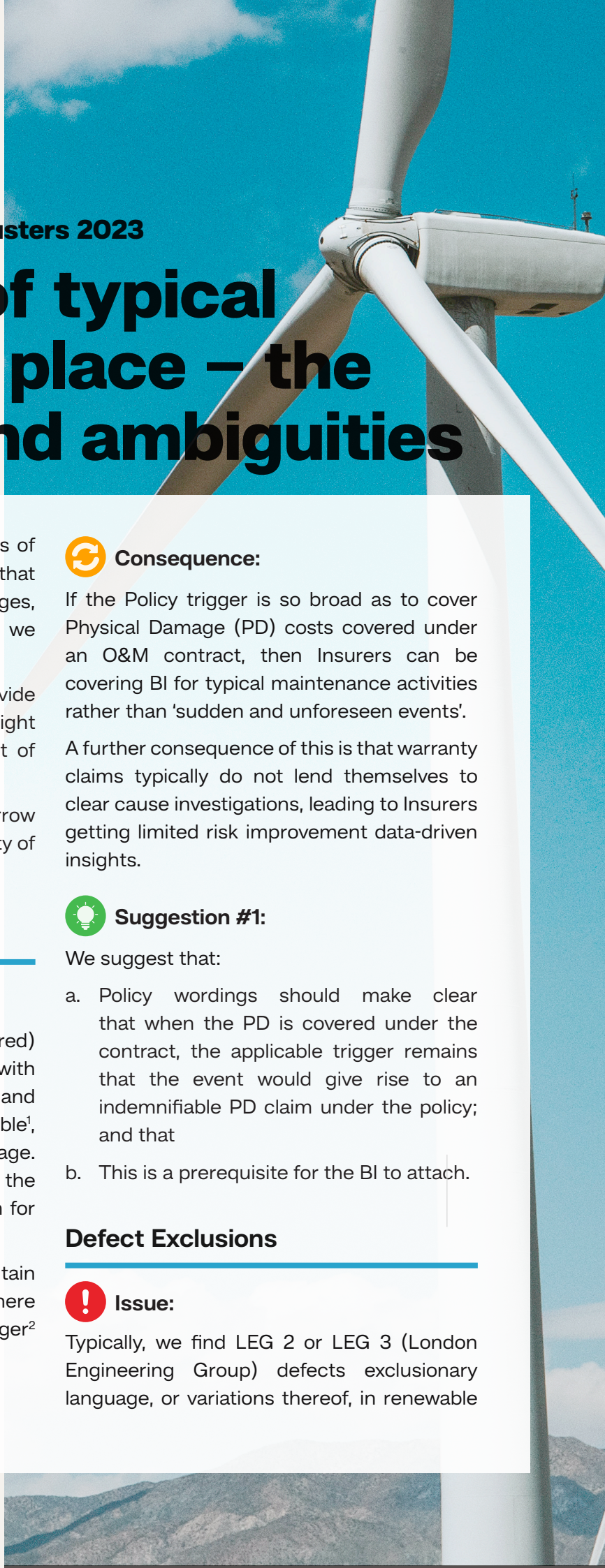
GRS Global Risk Solutions

GRS Renewable Energy Loss Adjusters 2023

An analysis of typical coverages in place – the challenges and ambiguities



In this article, we discuss several aspects of renewable energy insurance coverage that perhaps give rise to unanticipated challenges, which we aim to highlight. Specifically, we address:

a. Standard Policy sections that may provide indemnity beyond what insurers might intend, which accrues to the benefit of renewable energy asset owners; and

b. The challenges associated with narrow insurance wordings and the complexity of renewable energy generation.

Policy Trigger

Issue:

Renewable asset owners (i.e. the Insured) often secure service contracts with provisions that hold the Operations and Maintenance (O&M) contractor responsible[1], in some instances, for physical damage. Notwithstanding the O&M's liability, the Insured will still make an insurance claim for their loss of revenue.

Renewable policies typically contain provisions allowing for such scenarios; there is not a traditional physical damage trigger[2] for Business Interruption (BI) coverage.

Consequence:

If the Policy trigger is so broad as to cover Physical Damage (PD) costs covered under an O&M contract, then Insurers can be covering BI for typical maintenance activities rather than 'sudden and unforeseen events'.

A further consequence of this is that warranty claims typically do not lend themselves to clear cause investigations, leading to Insurers getting limited risk improvement data-driven insights.

Suggestion #1:

We suggest that:

a. Policy wordings should make clear that when the PD is covered under the contract, the applicable trigger remains that the event would give rise to an indemnifiable PD claim under the policy; and that

b. This is a prerequisite for the BI to attach.

Defect Exclusions

Issue:

Typically, we find LEG 2 or LEG 3 (London Engineering Group) defects exclusionary language, or variations thereof, in renewable

[1] *Under unscheduled maintenance provisions in a full-scope contract*

[2] *Sometimes referred to as the Material Damage proviso*

policies. However, we have seen a recent trend of policies with no defect exclusions, broadening the coverage.

Consequence:

If the defective part itself is not being excluded, then:

- This increases the indemnifiable loss. Previously an adjustment would be applied to deduct the cost or remedial works associated with the defective part; there would only be cover for the consequential damage only (LEG 2).
- It can also make conducting a Root Cause Analysis (RCA) less worthwhile since coverage attaches in any case, meaning serial defects are not identified. Ultimately this leads to a less than perfect understanding of the ongoing risk for all stakeholders.
- It also results in longer indemnifiable indemnity periods for the BI claims too, as Insurers are paying for loss of revenue accruing during the period of defect rectification.

Suggestion #2

Consideration needs to be given to the consequences of deleting defect exclusions. Using standardised language for defects does offer clarity.

Public Authority Exclusion

Issue:

Policies have historically used language that means losses resulting from public authority orders being outright excluded. However, we have noted a subtle change to this wording with the addition of 'unless as a result of a normal consequence of the loss'.

Consequence:

In some jurisdictions, due to health and safety concerns, it is common to shut an entire site down if there has been a major incident on one part of the asset. The loss may have taken one turbine offline or one section of the solar park. However, the entire site is offline due to the local authority order. Usually, this part of the BI would not be covered due to the public authority's order exclusion.

We have observed that the subtle wording changes have led to debate as to whether a public authority order is a normal consequence of the loss (as it is a normal Health and Safety concern). If so, insurers can be exposed to a larger BI claim arising from the entire site being offline.

Suggestion #3

Adaptation of the public authority clauses can result in unforeseen consequences with greater exposure from minor losses needing to be considered.

Insured Parties

Issue:

Construction policies typically include contractors of all tiers. We have recently seen cases where contractors have also been included as insured parties on operational policies.

Consequence:

Two recent significant losses were the result of contractor errors. Because of their inclusion as an additional insured under the policy, plus relevant waivers of subrogation, insurers paid the claim and were not able to make a recovery when otherwise they might have done. This significantly increased insurers' exposure in both instances.

Suggestion #4

We suggest insurers should be mindful of protecting their rights of subrogation when considering requests to include contractors as insured parties in operational policies. The pressure to do so may arise as Asset Owners are asked to do so under O&M contracts.

Lightning Losses

Issue:

Based on the analysis of our extensive loss database, the most common operational onshore wind turbine loss is lightning damage to blades. Lightning is typically a covered loss. Notwithstanding this, we consider it worthwhile to examine the blade if it has failed catastrophically.

Consequence:

We have had examples where a blade has failed catastrophically when hit by lightning, but further examination has found deficiencies with the manufacturing, e.g. lack of adhesion on the blade surfaces. Such defects would not be discovered upon annual inspections but are exposed when the blade is hit by lightning – had the defects not been present, it is likely that the blade could have withstood the lightning strike with minor damage.

In those cases, an adjustment is proposed whereby Insurers only pay for the cost of the repairs that would have been required but for the defect, e.g. an up-tower or down-tower repair, rather than the full cost of the replacement blade.

Finally, we also note that, while lightning is usually an excluded cause within maintenance/service agreements, sometimes "lightning at levels which the Works are designed to withstand" is not excluded. If Insurers are not asking for a blade inspection, the result is that they might be paying for losses that should be paid for under the Owner's contract with the maintenance contractor/manufacturer.

Suggestion #5

Even in the case of lightning damage, it can be worthwhile further examining the blade if it has failed catastrophically. Examination can be done on a desktop basis to reduce costs.

Contingent Business Interruption (CBI)

Issue:

Contingent Business Interruption (CBI) in renewables usually relates to a site being offline due to an external event, for example, damage to equipment owned by the Distribution Network Operator (DNO). CBI extensions usually have a restriction, e.g. up to the first non-owned substation, and a shorter indemnity period and/or longer waiting period deductible. This is so insurers are not liable for grid incidents distant from the site. We would typically consider "electrical grid" as past the first non-owned substation.

Consequence:

We have seen cases where the incident is outside of the scope of the CBI cover, but the insured is claiming under a suppliers' extension. The suppliers' extension appears to be intended to respond to a failure of supply to the site rather than an inability to export. In our experience, depending on the design of the cable, both the supply and export cable could be run through the same cable trench – leading to ambiguity over whether such damage can fall under the suppliers' extension.

Suggestion #6

Clarity could be given to the suppliers' extension that it is intended to specifically cover failure of supply of utilities only, or alternatively a similar geographical restriction could be introduced e.g. up to the first non-owned substation to bring the extension into line with the CBI cover.

Underinsurance

Issue:

Post-pandemic we see many Policies that still do not include average clauses or the newer BI 'volatility clauses'[3].

Consequence:

We see a higher number of instances, in many jurisdictions, where the sums insured are significantly inadequate. The result is that an inappropriate premium is paid by the insured relative to the exposure. This has been exacerbated by the fluctuations in wholesale energy prices in recent years.

Suggestion #7

We see this as an area that should be continuously scrutinised and refer readers to our article on Volatility Clauses.

[3] *For background on volatility clause, we refer readers to our earlier article that addressed this.*

Civils Works issues

Issue:

An unforeseen consequence of upsizing turbines appears to be the highlighting of a European phenomenon of claims related to civil works involving the temporary construction of lifting pads and laydown areas. Many European wind farms are surrounded by areas of restriction in terms of the permanent infrastructure allowed following the initial build of a farm. As such lifting areas are regularly removed due to environmental legislation.

Consequence:

As such, a potentially less discussed part of claims cost exacerbation is the temporary reconstruction of such and the cost involved. To this end it is not unusual for Insureds to present substantial costs in relation to such civil works.

Suggestion #8

This phenomenon is worthy of further Underwriting consideration, and one would assume limits – since this concept appears to be increasing as rotor size expands (depending on Policy wordings, this can lead to third party liability claims if adjacent farmer's crops have to be destroyed or similar). It should also be noted that the potential cost of road transit has increased for larger items of equipment, with some jurisdictions requiring multiple permits to move equipment on roads leading to delay / cost.

Should Insurers be paying for Maintenance?

Issue:

A predicament regularly faced by Insurers is that the 'all-risks' nature of the insuring clauses used within renewables regularly lend themselves to wide coverage – including maintenance issues.

Consequence:

By not defining component parts, any proposed exclusions for worn items usually only result in negligible adjustments. Hence insurers are paying for poor maintenance, rather than the costs being recovered under the O&M contract.

Suggestion #9

Gearboxes are a typical example. By defining the component part within the Policy, insurers address the issue. Some insurers go much further, by allowing Insureds to only claim a percentage of the component parts depending on age – for typical mechanically worn components only.

Solar: circuit breakers

Issue:

Finally, a cautionary tale in solar; circuit breakers / motorised breakers are regular claim items. Often, they cost less than 10,000 EUR.

Consequence:

Notwithstanding this, these can keep an entire solar farm disconnected with a disproportionate effect on loss of revenue. Moreover, acting as part of the electrical protection system, these components are prone to overvoltage damage from lightning strikes.

Since these items are not costly, O&M contractors might be expected to keep spares available, but currently this rarely appears to be the case. This seems to be atributable to ongoing supply chain issues, from the confluence of global macro-economic challenges.

Suggestion #10

Reviewing renewable asset owners' (i.e. the Insured) ability to mitigate losses from minor equipment failure and potentially endorsing policies accordingly, would appear to be a sensible reaction to avoid repeated atritional losses.

Summary

We share our midyear thoughts on insurance coverage in the renewable energy insurance space as a prompt for all stakeholders to be mindful of the challenges and ambiguities still present in typical insurance forms. As the sector continues to mature, we foresee that these ambiguities will continue to be reduced as familiarity with technology and appropriate insurance wordings increase. In the meantime, however, should any of the contents be thought-provoking please do not hesitate to contact the authors for a further full discussion.

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