



Veronique Buehrlen KC

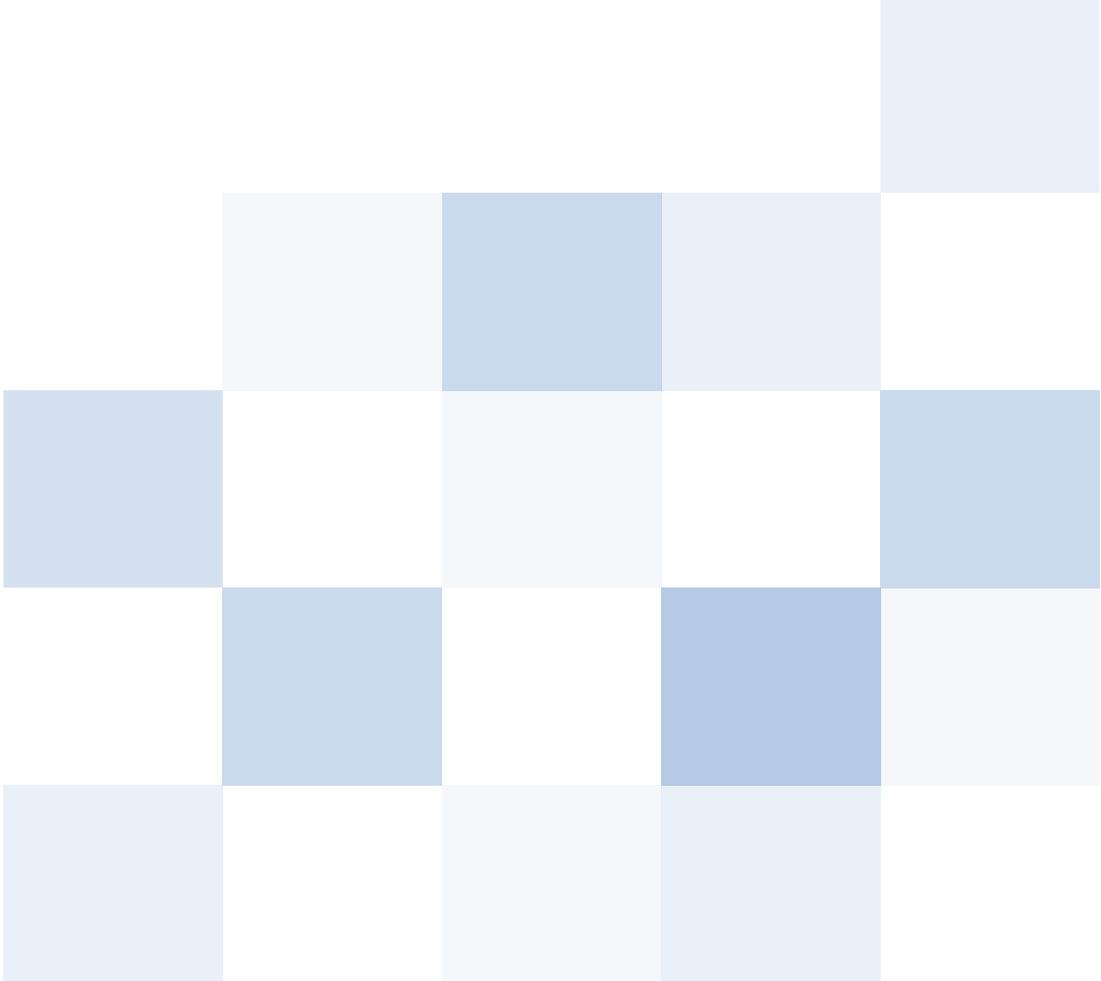


Paul Buckingham KC

Panel 2: Marine Spreads in Oil and Gas Contracts

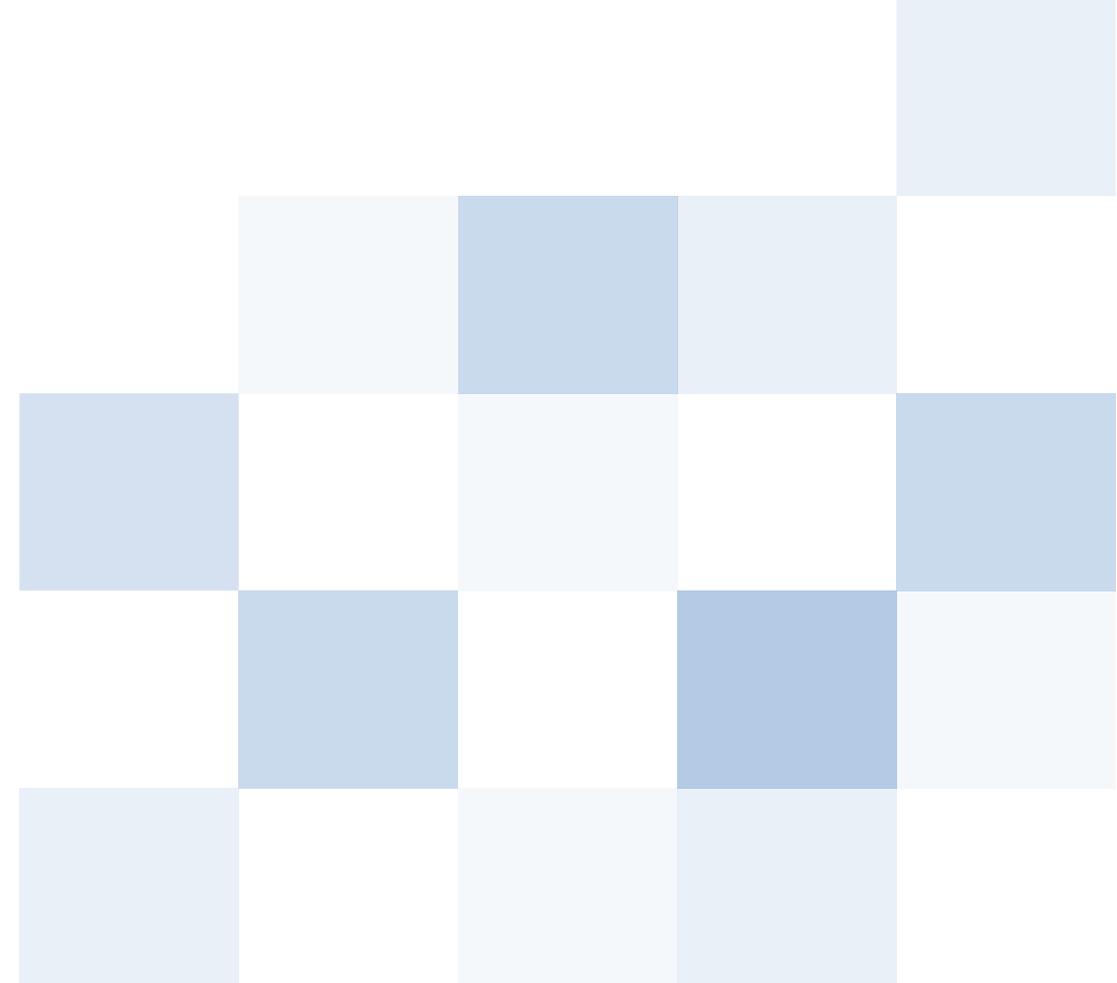
- Offshore construction is challenging
 - Marine Spreads are usually a combination of vessels and equipment
 - Installation vessel/HLVs/crew boat/PSVs/tugs
 - Cranes/piling hammers/cable handlers/pipeline carousel/cradles/ROVs
 - Accommodation vessels
 - Specific technical requirements
 - Specific operational weather envelope
 - Limited pool of vessels, usually in high demand
 - Long lead times to secure the right vessel
 - Operational and standby rates can be very high
- If the right vessel is secured, what can go wrong?

Specifying the vessel “foreseen...jack-up crane vessel [xx] or similar vessel”



Specifying the vessel

Actual vessel: floating crane



- **Floating vessel less capable than a jack-up**
 - Maintaining position
 - More susceptible to weather conditions
 - Swell
 - Current
- **Contract requirements were unchanged**
 - Contractor remains responsible for any cost and schedule consequences
 - Contractor not entitled to change in weather risk

- Delay to work commencement
 - Potential change to seasonal weather window
- Remedies
 - Priority clauses
 - Injunction



Priority clauses/Injunction



The Vessel Owner shall ensure that no conflict will arise between the Work and any other work performed by the Vessel Owner as a result of tendering for and performance of such other work. The Vessel Owner agrees not to commit to or undertake any other work during the period of this Contract that would give rise to any such conflict unless it has the prior written agreement of the Employer which shall not be unreasonably withheld ...

The Vessel Owner shall not depart Worksite, or reschedule any part of the Work, or re-assign any specified Equipment, without the prior written approval of the Employer.

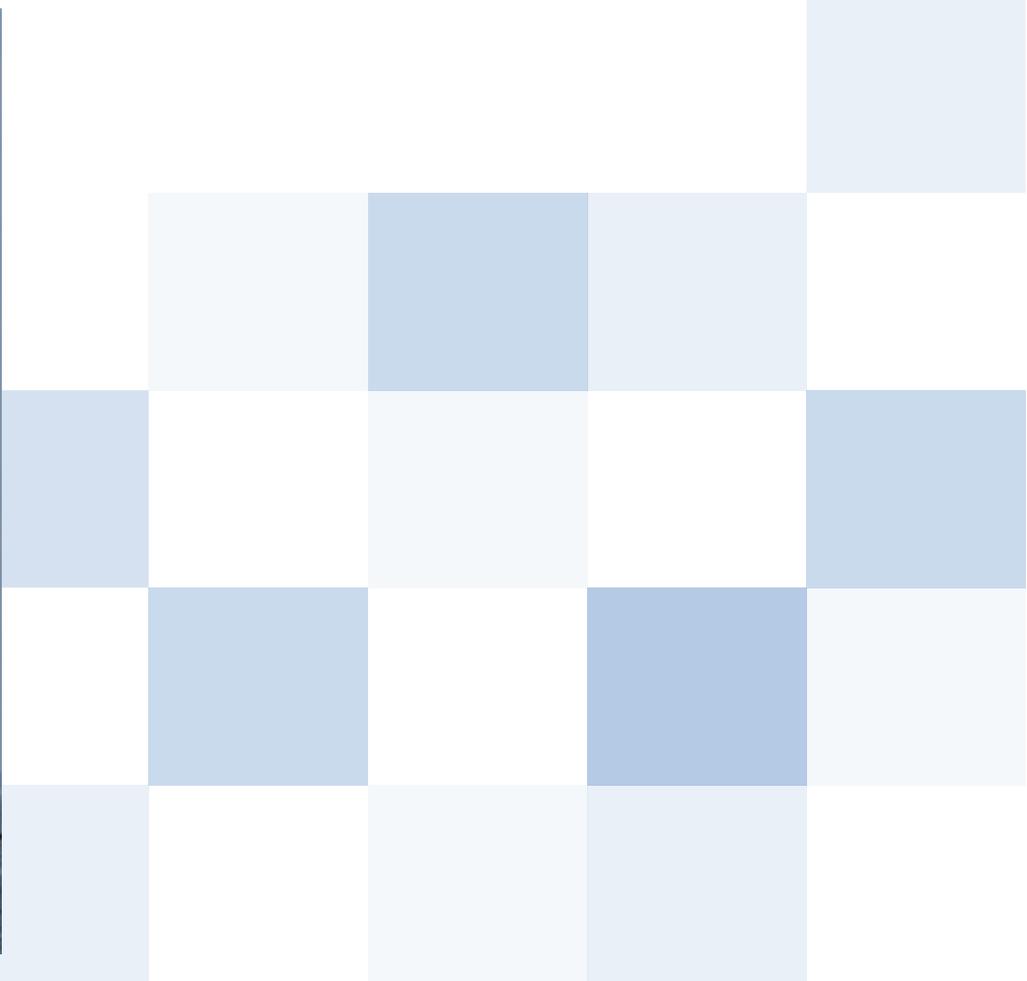
The Vessel Owner shall not assign to any other work a priority which affects or interferes with the due and timely performance of the Work in accordance with the Schedule.

The Vessel Owner shall not remove or reassign any vessel without prior written authorisation of the Employer.

At no time shall the Vessel Owner's other work pre-empt or be substituted for the Work ...

Changing the vessel: Robin Rigg Windfarm

Intended installation vessel: Lisa A



Lisa A was blighted by problems



➤ Timeline

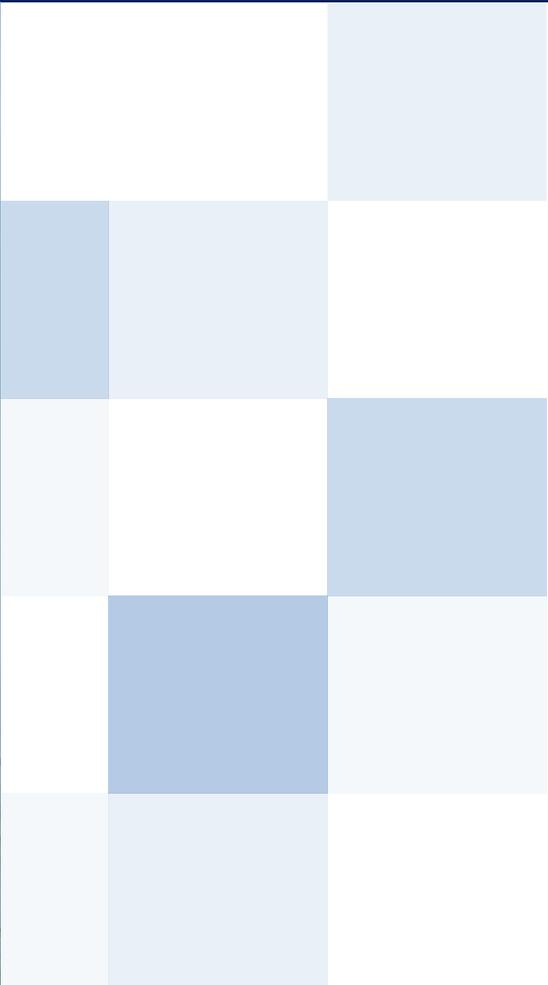
- Mobilised 3 months late: June => September 2007
- Revised programme due to vessel limitations: 142 days => 255 days
- Punch-through incident on in September 2007
 - led to 8 months of repairs
- Re-mobilised June 2008
 - Work progress much slower than anticipated
- Use of vessel abandoned by the contractor
 - Demobilised in breach of contract

Robin Rigg Windfarm Replacement vessel: Resolution



© Hardlight

vesseltracker.com



➤ Timeline

- Agreed deployment of Resolution EON
- Ultimately installed 60 of the 62 foundations during three campaigns

➤ EON paid for the Resolution

- Variations issued under the contract for the campaigns
- Parties disagreed as to how to value the change in the works

Valuation of variations: clause 31.3



If the Contractor and the Employer are unable to agree on the adjustment of the Contract Price, the adjustment shall be determined in accordance with the rates specified in Part L, Schedule L1.3, Schedule of Rates. [Limb 1]

If the rates contained in the Schedule of Rates (Schedule L1.3) are not directly applicable to the specific work in question, suitable rates shall be established by the Engineer reflecting the level of pricing in the Schedule of Rates (Schedule L1.3). [Limb 2]

Where rates are not contained in the said Schedule, the amount shall be such as is in all the circumstances reasonable..... [Limb 3]

- **Original Contract**
 - Lump sum of €22.1 million for installation of the foundations
 - Schedule of rates: daily rate for Lisa A of €150,000 per day
- **EON: assess marginal cost**
 - Variation was a change to the way in which works carried out
 - Assess marginal cost of carrying out the works by way of changed methodology
- **MTH: simple add and omit**
 - Omit: unearned portion of the lump sum of €22.1 million
 - Add: contractor's installation costs using the 'free-issue' vessel
- **What happens to the contractual risk of the inadequacy of the Lisa A?**

- Court decided that in MTH's favour (para 60):

“...The substitution of the Resolution for the LISA relieved MTH of the obligation to continue to pay for the latter vessel....The transfer of risk that did occur was, as the judge pointed out, that which arose from E.ON's decision to hire the Resolution herself without putting in place any mechanism which would transfer the cost of hire to MTH.”

- Defining the Marine Spread
- Will the vessel combinations change as the work progresses?
 - How are the stages defined?
 - How are payments determined?
- Lump sum
 - Contractor's risk
 - Defining responsibility for delay is crucial

- **Daily working rates**
 - Define when the spread is 'working'
 - Payment for defects in work performed/remedial work
 - Risk of defects in equipment
 - Maintenance rates
 - Payment for certification time/calibration
- **Standby rates**
- **Provisional sum items**
- **Exclusion of loss clauses**



- Clauses have moved on but still cause real issues of interpretation

“CONSEQUENTIAL LOSS” means: (a) consequential, special or indirect loss under English law; and (b) loss of or delay or deferral of production, loss of product, loss of use, loss of revenue, profit or anticipated profit (if any), (c) any spread costs incurred by COMPANY GROUP (d) loss of or delay in drilling ... whether or not foreseeable at the EFFECTIVE DATE

...for the purposes of this clause "spread costs" shall mean any cost of or loss of use of property of COMPANY GROUP and/or cost of or loss of use of services provided by COMPANY GROUP and/or cost of or loss of use of COMPANY ITEMS (including without limitation the cost of or loss of use of property, services, equipment and material of SERVICE PROVIDERS and/or THIRD PARTIES)

- Detailed due diligence on the adequacy of installation vessels
 - How well developed is the proposed installation methodology?
- Think carefully about any significant negative variations
 - Amendments are complex and fraught with danger
- Consider carefully the pricing regime and risk
 - Lump sum
 - Daily rate
 - Combinations can be problematic