

LEG Defect Exclusions and Project Delays

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LEG1/96

Defect & Damage

What's Excluded?

“Loss or damage due to defects of material workmanship design plan or specification.”

LEG2/96

Defect Rectification

What's Excluded?

“cost which would have been incurred if replacement or rectification of the Insured Property had been put in hand immediately prior to the said damage.”

LEG3/06

Defect Improvement

What's Excluded?

“cost of replacement or rectification which is hereby excluded is that cost incurred to improve the original material workmanship design plan or specification.”

LEG1/96

Defect & Damage

What's Excluded?

“Loss or damage due to defects of material workmanship design plan or specification.”

Delay Analysis Approach

The same as all ‘Non-incident Related’ delays

All excluded. Any critical delay would directly impact the Scheduled Business Commencement Date.

LEG2/96

Defect Rectification

What's Excluded?

“cost which would have been incurred if replacement or rectification of the Insured Property had been put in hand immediately prior to the said damage.”

Delay Analysis Approach

Hypothetical ‘Non-Damage’ Scenario

Very dependent upon nature of Defect i.e. Workmanship vs Design.

LEG3/06

Defect Improvement

What's Excluded?

“cost of replacement or rectification which is hereby excluded is that cost incurred to improve the original material workmanship design plan or specification.”

Delay Analysis Approach

Hypothetical ‘Rectification Only’ Scenario

Where, the actual time to rectify and improve the original exceeds the ‘rectification only’ timescale, the incremental time will be excluded.

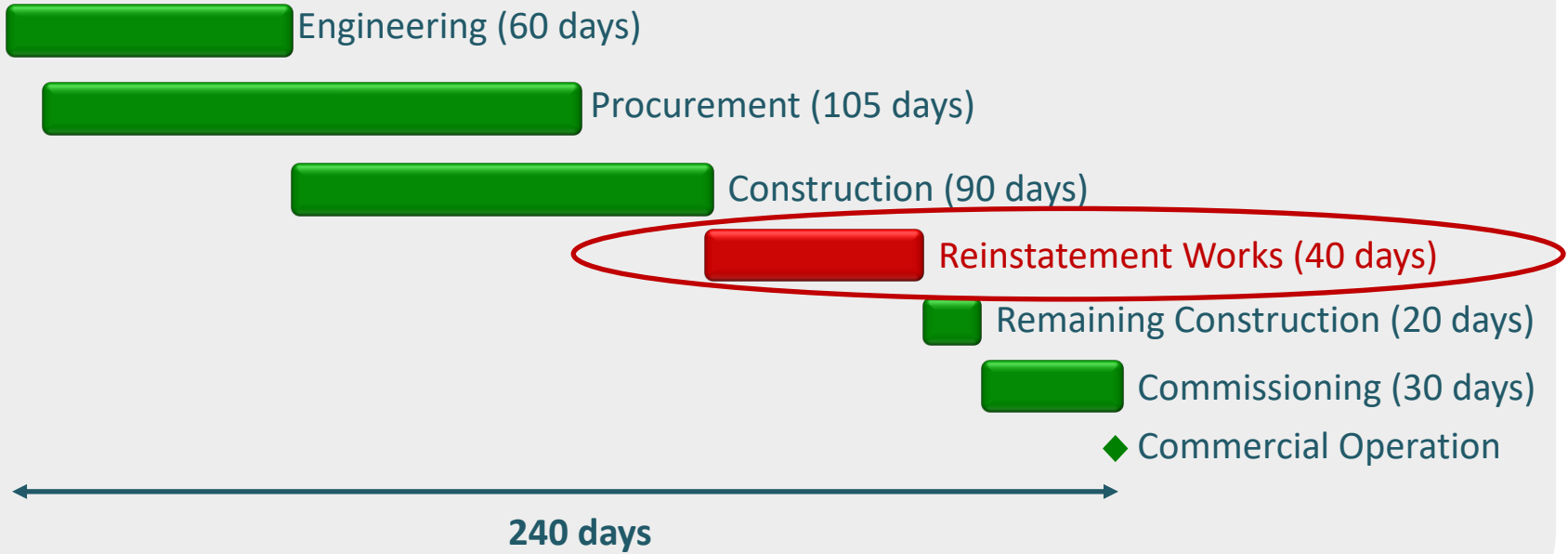
Categorisation for Delay Analysis

	LEG 1/96	LEG 2/96	LEG 3/06
Damage	-	✓	✓
Defect Rectification	-	x	✓
Defect Improvement	-	-	x

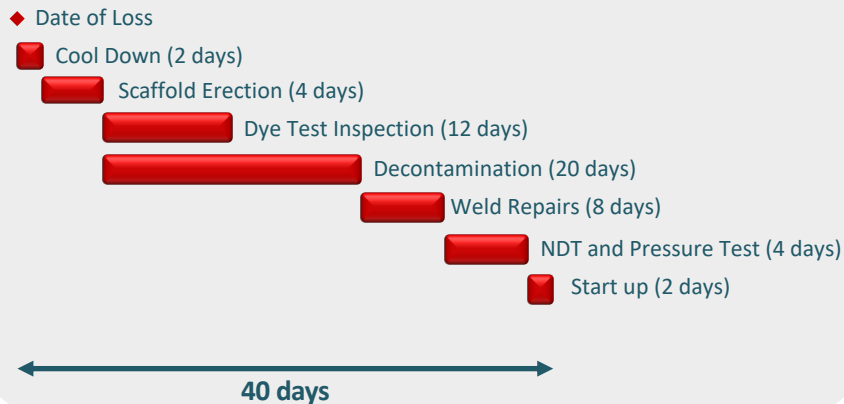
Super heater pipework leak caused by defective weld within boiler



Actual Reinstatement Duration



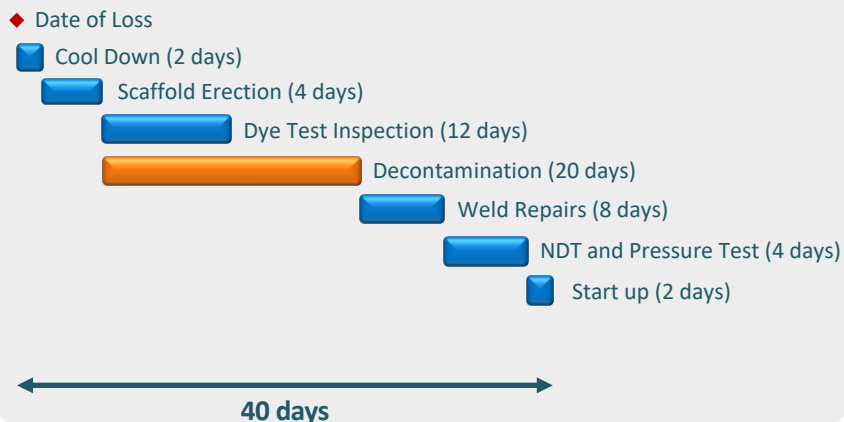
Actual Reinstatement Duration



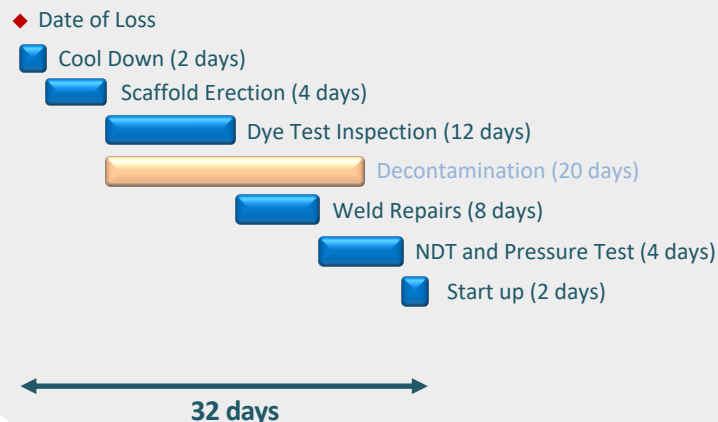
LEG 2/96

Only incremental impact of damage is indemnifiable, not defect rectification

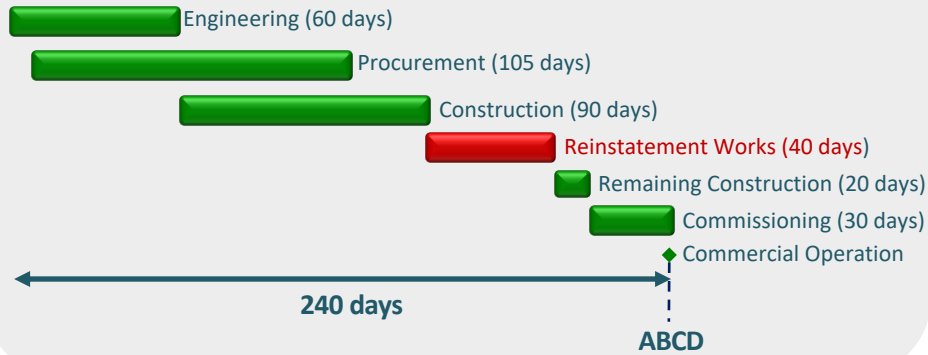
CCi Categorisation



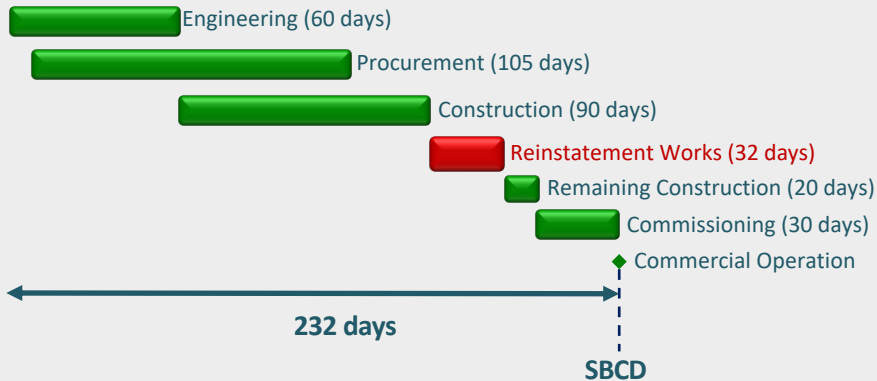
CCi 'But For ' Reinstatement Duration



Actual Reinstatement Duration



CCi 'But For' Damage Reinstatement Duration



DSU Entitlement
8 days



What are the Insured's expectations / understanding?

The exclusion does not specifically mention delay...

- Often the insured do not expect defect exclusions to impact DSU entitlement

Repairing damage was critical, not rectifying the defect...

- Concurrency of traditional construction disputes
- Dominant Cause / Apportionment

'But for' the damage we would have done it differently...

- Defect rectification could have been executed more quickly
- A different solution would have been implemented

Where does Defect Rectification end and Improvement begin?

Material Defects

- Seems straightforward, is a like-for-like material being utilised?

Workmanship Defects

- Seems straightforward, is a like-for-like method being utilised?

Design Defects

- Is it possible to “rectify” and not “improve” a defective design?
- Should all non-damage related works carried out in relation to a defective design be seen as improvements?

Is any change away from the original purely classed as improvement?



Timeline
Forensics

Reinstatement
Support
Management

Project
Monitoring

Cost Analysis
& Management

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