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The Wire

The newsletter for insured members of ITIC. December 2012

The Wire is ITIC's e-newsletter which is sent to insured members of ITIC and their brokers several times a year. Each issue is specifically targeted to a sector of the membership, which on this occasion is naval architects. The following selection of claims is to provide you examples of what could happen in your business and therefore alert you to any loss prevention measures that you need to take.

Naval architects should ensure that they operate on standard terms and conditions, which clearly set out the scope of work – what you will, and will not be responsible for. ITIC has a draft copy of standard trading conditions on the website : www.ITIC-insure.com. The contract should also limit liability to a specific amount relative to the fee being earned for the project. Choice of jurisdiction and governing law may also help reduce or limit potential exposure. Finally, an exclusion or limitation clause should be included to account for any alterations made after the initial design.

Irrespective of what steps you take to protect your company, sadly we are only human and mistakes will happen. When you are faced with a mistake, you need an insurance company alongside you to strike the balance between keeping your client as happy as possible as well as assisting you with the claim.

ITIC
IS MANAGED
BY **THOMAS
MILLER**

Naval Architect left with the bill

A naval architect entered into an agreement in 2007 to design a jetboat. The company that built the boat did not have any insurance, although the naval architect was not aware of this fact at the time. In hindsight, they may have wished they had checked.

The vessel was delivered in 2008, but in early 2009 the engine mounts collapsed and various other problems occurred which rendered the vessel unable to operate.

In 2010 proceedings were issued against the boat builder and the architect. The principal allegation relating to design concerned the number of engine mounts installed. However, a comprehensive survey report found that the cause of the collapse was abuse of the engine by the operator rather than the mounts installed. It transpired that the total claim was for USD 700,000.

Legal proceedings were commenced against the builder and the naval architect. The builder revealed they had no insurance and that they could only contribute USD 40,000 towards the claim. To prevent a disproportionate amount of legal costs and time being incurred, ITIC offered a settlement amount on behalf of the naval architect.

The above is a good example of a very typical situation. Even though the naval architect was not negligent, as the builder had no insurance the naval architect was forced to contribute more in settlement, to avoid the prohibitive cost of further litigation in a jurisdiction where costs could not be fully recovered.

Incorrect calculations



A naval architect was appointed to re-design and certify part of a mast support structure on a yacht. The yacht was being converted into a luxury vessel to be used in commercial operations. The naval architect had no involvement in the original design of the yacht.

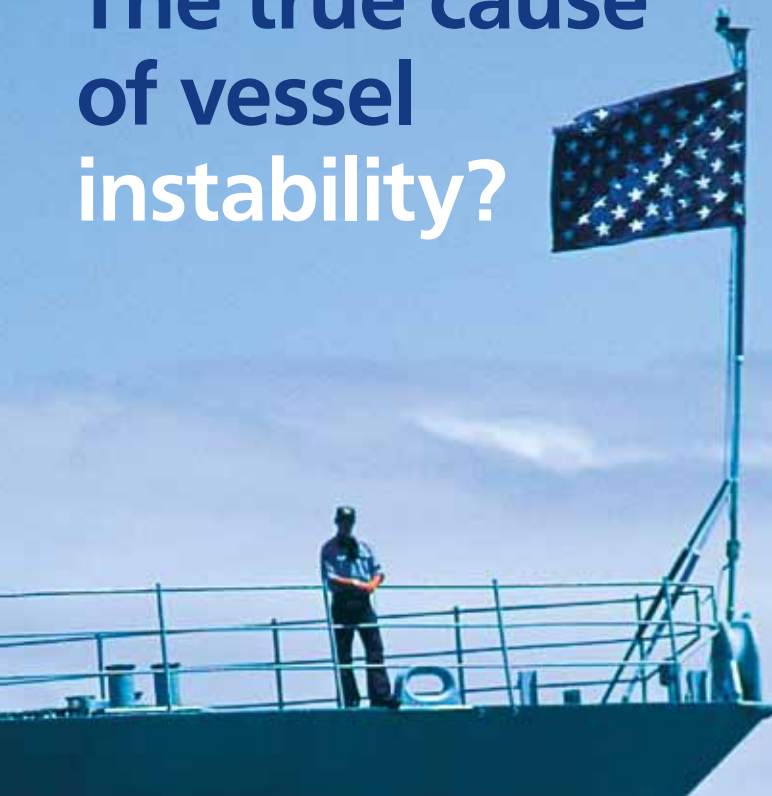
As the refit neared completion, the architect realised that the calculations he was using in relation to the strength of the plate on which the mast was to sit were incorrect. This could have resulted in the mast pushing through the plate when the vessel was operated. Significant work (including stripping out part of the accommodation and fuel tanks) was required to install a thicker plate.

When this additional work was completed, the architect was presented with an invoice which his clients alleged represented the additional costs incurred by them as a result of the architect's late discovery of the incorrect calculations.

The architect sought advice from ITIC as to how to respond to this.

ITIC instructed an independent expert to provide an opinion as to the alleged costs. ITIC then negotiated a settlement with the claimants, based on the opinion obtained.

The true cause of vessel instability?



A naval architect member of ITIC designed two vessels to be built to US Coastguard rules. Shortly before the completion of the first vessel, the member advised ITIC that it had made an error the result of which was that the vessel would not meet the strict stability criteria.

As the delivery date was fast approaching, a solution to the problem was agreed between the naval architect and the ship builders. This involved the fitting of two new bulkheads. However, shortly after the rectification work commenced, it transpired that there was nothing wrong with the original design.

The cause of the apparent failure to meet the stability criteria was due to the use of different versions of software. The hull model was generated on a new version of the software, while the analysis was generated on an older edition.

Rectification work ceased immediately and the vessel was restored with some minor modifications to the original design. The shipyard made a claim of USD 95,000 for the unnecessary work carried out. ITIC indemnified the naval architect.



Trouble with tugs

A naval architect's client commissioned the design of a tug but did not immediately build it. Two years later, the client contacted the naval architect and asked him to update the specification.

Four tugs were ordered. The client alleged that various defects in the revised specification had caused delays in the building of the tugs and claimed US\$2.5 million in damages.

ITIC investigated the claim which was found to be without merit. After negotiations the client offered to accept a settlement of US\$500,000. This was felt to be excessive and the claim was finally settled on the basis of a nuisance value payment. However, the legal costs and experts' fees incurred in their defence amounted to US\$150,000.

Without cover the naval architect would have had to fund these fees himself.

One of the main reasons why professional indemnity insurance is so important is that even when a claim does not succeed, the costs of defending it can be substantial.



Lengthy legal dispute

An architect was contracted to design the hull and rigging for a new yacht. Another naval architecture firm was contracted to design the interior. The yacht was completed and delivered to the owner.

However, during a party on board one of the guests became ill and decided to go to sleep early. When he awoke, in the middle of the night, he fell down a small set of stairs inside the yacht.

The guest suffered damage to his back and hip and as a result sued all parties involved with the yacht. The parties included the owner, the builder, the surveyor and the two naval architecture companies.

Legal counsel was appointed by ITIC to defend the naval architect who was insured by ITIC. Despite the fact that any design fault on the interior of the vessel had no relation to the work carried out by the architect insured by ITIC, they were jointly sued in the amount of USD 1 million.

Lawyers spent over USD 150,000 and 7 years attempting to obtain a judgment of removing the naval architect from the proceedings.

A costly event, for something that was not even due to any negligence by the naval architect.



Stability study

A naval architect in France provided a stability study on a barge which guaranteed it would remain stable up to a maximum cargo load of a specific weight. The condition of this guarantee was that for the barge to maintain stability it had to be loaded as per the loading plan and ballast had to be dispersed in conformity with the plans drawn up.

When the vessel was loaded she capsized and a total of EUR 831,150 was claimed for the loss of cargo. ITIC negotiated with the claimants on behalf of the naval architect. The claim was eventually reduced to EUR 400,000 and paid in full by ITIC.



Missed evidence

A naval architect was instructed by the owner of a vessel to investigate the cause of continued cracking in the hull.

The report produced by the naval architect attributed the blame to the original architects for their “negligent” failure to properly test the natural frequency of the plates, which caused excessive vibration of the hull.

On the basis of this report, the owner issued proceedings against the original architects. The original architects defended the claim successfully as they were able to produce evidence that they had adequately tested for the natural frequency of the plates and that any further testing would not reasonably be required.

It subsequently turned out that the naval architect had this evidence in his possession before he produced his report, but had failed to realise its significance.

The owner claimed from the naval architect the wasted costs of pursuing the original architects as a direct result of relying on their defective report.

High speed ferry and increased fees



A company ordered a ferry from a shipyard. A naval architect, insured by ITIC, was appointed to supervise the build but the design had been produced by another naval architect. As the vessel was to be used on an international route, she had to conform to High Speed Craft (HSC) regulations, which are more stringent than regulations for domestic craft.

Several meetings took place over the nine month build period between the yard, the ITIC assured and the classification society. It appeared that the owner and the yard wanted to build the ferry cheaply.

The HSC regulations specified certain requirements over the build of elements of the ferry. However, the classification society did not raise these issues until close to the end of the build period.

The issues meant that the yard had to undertake additional work, which implied extra costs. It attempted to pass these on to the member by alleging negligence on the part of the member.

ITIC represented the member at a meeting with the yard and pointed out that there was no evidence of negligence by the member whose only role was to supervise the build. The yard subsequently withdrew the claim.

The wrong bollards

ITIC's member designed some bollards to be placed in a north European port. Most of the bollards were welded into position and were satisfactory.

A small percentage of the bollards were to be removable for use with roll on roll off ships docking at the quayside. All the removable bollards failed during testing. It transpired that

the thread specified for the anchor bolts was the wrong type and the anchor bolts pulled out during stress tests.

The bollards were sent back to the UK for retooling and were redelivered to the customer. The costs incurred due to the failure in the design amounted to USD 90,000. This amount was settled by ITIC.

Specialist professional indemnity insurance for transport professionals everywhere.

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