Professional Indemnity Claims

Adjusters and Lawyers working as one – the team approach

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In this article we outline how an Engineering Loss Adjuster can team up with appointed lawyers to identify quickly the key issues and determine how best to establish probable root cause, liability and quantum aspects, such that the matters can be resolved to all involved parties’ satisfaction.

Often Engineering Consultancies are tasked with some very complex and high value design projects. Much effort and time is put into the design, from front end engineering to provide the viability and cost of a project, through to detailed design, and ultimately providing assistance to the Construction Contractors during the build and commissioning.

During these processes the engineering consultants are called upon to utilise their expertise and resources. The challenge for these companies is to resource accordingly and ensure that the right experience is deployed, the work fundamentally completed by qualified professionals and checked so that errors and omissions in design are avoided. Unfortunately, this does not always go to plan and as a consequence errors may exist which ultimately do not manifest in damage or loss until the equipment or structure is constructed and placed into operation.

For the above reason most, if not all, Engineering consultancies buy professional indemnity Insurance. The typical problems which they are seeking cover for are design errors that lead to loss associated with:

- Materials selection
- Incorrect interpretation of environmental conditions
- Simple calculation errors for load cases, dimensions or process flow
- Complete omission of consideration of certain load cases

The list goes on.

When a loss is identified its cause is often not obvious, has a complex history, and involves contracts and the law. Insurers often will appoint lawyers to investigate and defend the interests of the Insured and the Insurer. When engineering aspects which are very technical are involved the task is not simple.
To provide some flavour as to what a Professional Indemnity wording might seek to provide cover for, the following Insuring clause is not uncommon:

“We agree to indemnify the Insured against loss incurred as a result of any claim for civil liability first made against the insured and notified to us during the period of insurance, arising from the Insured’s provision of the professional services”

The above of course will be subject to policy deductibles, sublimits and exclusions. In some cases there may be additional cover by way of endorsement to the policy, some of which are standard and others which may well relate to the involved profession. Standard PI wordings can easily be sourced from the internet from major Insurance carriers.

In respect of the Engineering professions, typical exclusions may include costs associated with rectification of defects, contractual liabilities, or advices provided by unqualified staff.

The advantage of Engineering Loss Adjusters being involved in engineering PI claims and the benefit that this brings is best explained by way of some examples.
CASE STUDY 1 – BLISTERING COATING

Manifestation

From time to time in respect to construction projects, it is not uncommon to come across claims involving coating failures. Such failures can manifest as bubbling, flaking or cracking.

Such issues can be difficult to assess and expensive to rectify. Normally the first to discover the ‘problem’ is the contractor involved in the construction or an operator after handover. When such matters arise, the supplier states it must be an installation problem or the contractor asserts the product is faulty. Everyone wishes to look the other way because site fixes are not straight forward and can be wide spread.

The primary concern with coating failures is that the normal sole purpose of the coating is to protect the parent material from corrosion, heat, weather etc. In some cases, such as hydrocarbon plants, the failure of a coating can expose stainless steel pipe to stress corrosion cracking which can obviously lead to gas release and explosion – not ideal!

Root Cause

So how can this type of loss be a PI claim? If a consultant that is not an Insured party to the construction policy has provided advice upon which others have relied, which has led to the coating failure, then they could be staring down the barrel of a claim.

In respect of coating failures some causes can include:

- Incorrect paint specification advice i.e. coating does not suit the environment or the material to which it is applied
- Incorrect installation advice – does the coating require certain surface preparation or curing time?

The science behind coatings and making them ‘work’ can be quite complex. With such matters it is most efficient to involve an Engineering Loss Adjuster who understands coatings, corrosion, construction and the various technical inputs that might apply. With many parties pointing at each other, it can be quite surprising how a ‘guilty’ party can spin their story to their advantage.

Engineering adjusters can assist in pin pointing probable causes and then involving the best and most appropriate subject matter expert to produce an expert report for lawyers – should the claim be big enough.

Quantification

The loss in most cases will involve blasting off all the ‘damaged / failing’ coating back to the bare material. A recoat exercise would then take place, only once the root cause is fully understood, and the chance of reoccurrence eliminated.

In the oil and gas industry the surface areas involved can be offshore on FPSO’s or platforms. The adverse environment can make for a very expensive fix.

If indemnity for such a loss were to be granted, then the Engineering Loss Adjuster would likely work with suitable Quantity Surveyors to either determine a ‘ground up’ loss estimate or alternatively audit a claim submission provided by the third party. Either way the quantum review of such matters can be complex and technical.
CASE STUDY 2 – INCORRECT SOIL / ENVIRONMENTAL DATA

Manifestation

Be it the installation of a buried pipeline or the preparation of ground to support a structure, much can ‘be missed’ when it comes to understanding the ground conditions. Issues of compaction, voids, hidden debris, water table and so on are potential areas of difficulty for construction projects if the geotechnical engineering is incomplete or not undertaken correctly.

If the soil conditions are not understood, then it is possible for sinkholes to unexpectedly form in and around the manmade assets. Initially the soil might appear ‘solid’ and compacted but after only a short period of time a sinkhole might form.

Root Cause

In the case of sinkholes, often the cause is partly a product of the site geology. Sinkholes can be natural or manmade. Natural sinkholes occur due to erosion or underground water. They may take many months or years before they manifest. With the ground made of various soils and rock, it can be susceptible to erosion, particularly when there is water continually seeping through the medium to the water table. Underground voids can form and when the soil structure becomes too weak to support either underground manmade structures or above ground structures, it collapses and opens a hole which might lead to the structures being unstable or damaged.

Aside from naturally occurring environmental situations the formation of sinkholes can also occur during construction or operational activities. Sinkholes can form due to drilling or excavation, unexpected water release or poor compaction.

The analysis of the root cause requires careful input from qualified geotechnical engineers and this is best guided by the steady hand of an Engineering Loss Adjuster as such analysis can be expensive and require site sampling / testing.

CTA has managed such consultants in the review of sinkholes involving underground mines, underground water pipelines and new property developments.

Quantification

Importantly, if indemnity is granted for such losses and that the design engineer is culpable for the losses, then the extent of those losses and the delineation of what is damage to property verses any required betterment will require careful review.

Often in these cases some betterment or improvement to the design might be required, which is in addition to the rectification of damage. Such improvements may require expensive earthworks and an engineering understanding of what is required will be vital to determining what might be considered a cost to pay.
CASE STUDY 3 – PIPELINE BUCKLING DURING OPERATION

Manifestation

Often the manifestation of damage occurs very soon after the commissioning of assets or late in the operating cycle. In the case of offshore oil and gas installations there is often the introduction of ‘hot’ and pressurised hydrocarbon fluids from reservoirs to subsea pipelines which creates a series of forces and stresses to which the pipe must withstand so that the hydrocarbon is contained throughout the operation life of the field.

Such pipelines are designed to allow for thermal expansion, corrosion, environmental load conditions such as currents, various pressure profiles and so on.

When a subsea pipeline expands due to heat it will naturally elongate. Normally such elongation results in some localised forces and stresses if anchor points are in play, but also the pipe might well deflect in a gentle and sometimes negligible manner.

If things ‘go wrong’ then a pipeline could suddenly buckle, or even worse, rupture during commissioning or operation.

Root Cause

One of the most vulnerable design cases that is considered is the case when the pipeline is drawing close to the end of its design life. It is not unusual for an internal corrosion allowance to be included in the design such that the pipe wall thickness required to contain an operating pressure is based on a corroded pipe. If the corrosion allowance is not removed from the calculations then there could be an unexpected over stressed pipe scenario that is ‘missed’.

In operation this operating case may not manifest as a pipe failure until some years into the field operation.

If a rupture does occur well into the design life of the pipeline, then the design will be scrutinised. Omissions could include:
– Not modelling for a corroded pipe
– Incorrectly designed or installed cathodic protection
– A change in process conditions
– External impact to the pipeline (vessel anchors)

Thus, the root cause may not be straightforward and any ‘cold case’ design review would be best supervised by an Engineering Loss Adjuster. Such losses have been investigated in the past by CTA.

Quantification

Often on old pipelines the reinstatement is expensive and may well entail betterment and/or other issues that are discovered during inspection. An adjuster with engineering experience would be well placed to assess costs that are directly associated with any loss resultant from faulty design.
Conclusion

The issue of liability under a PI policy is normally determined by lawyers. The lawyers ultimately rely on information sourced by experts. Engineering Loss Adjusters add value to the root cause investigation and quantum assessment because of their industrial experience with the assets and engineering principles involved.

When Lawyers and Adjusters work as a team then the benefits to Insurers and their clients will include enhanced commercial relationships, reduced costs, maximum efficiency and an overall user friendly experience.

CTA seeks collaborative approaches to such claims, can provide concise scopes of work to experts and are best placed to decipher the costs claimed against the policies. This of course can all be done in conjunction with the appointed lawyers so that an early and cost-effective assessment of the claim can be achieved and which in turn leads to a quicker, clearer and more cost effective resolution.

Charles Taylor Adjusting (CTA) Expertise:

CTA has qualified engineers on staff throughout all Australian offices with diverse backgrounds ranging from “big picture” Project Engineering / Construction right through to detailed design work. Our Engineering Loss Adjusters hold Adjusting qualifications and are members of the Australian Institute of Chartered Loss Adjusters (AILCA), the Australian & New Zealand Institute of Insurance and Finance (ANZIIF), or other UK-based professional bodies of equivalent or higher standards.

We ensure outcomes are concisely reported to Insurers to match their requirements in documenting the circumstances of the loss in a clear and logical manner, allowing them to reach a conclusion in respect to policy response.

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About Charles Taylor Adjusting

CTA is one of the leading loss adjusting businesses in the market. We provide loss adjusting services across aviation, marine, natural resources, property, casualty and special risks. The business primarily focuses on larger and more complex commercial losses arising from major insured incidents and claims. CTA is a business of Charles Taylor Plc (www.ctplc.com) which is quoted on the London Stock Exchange (CTR).

Charles Taylor plc is a leading provider of professional services to clients across the global insurance market. The Group has been providing services since 1884 and today employs over 3,000 staff in over 100 locations spread across 30 countries in the UK, the Americas, Asia Pacific, Europe the Middle East and Africa.