

WHAT DOES YOUR YACHT INSURANCE POLICY REALLY COVER? By Ken Draper

As a marine insurance broker for forty- five years and more recently as a consultant, I did not pay a lot of attention to my own yacht policy until I heard that some insurers were denying cover for sinkings caused by muskrats. I gathered over fifteen policies and found many coverage problems. The majority of today's policies purport to be "All Risk", however the exclusions are so numerous and in certain situations so dangerous for yacht owners, that they have a lower value for the boat owner than used to be the case. Some exclusions are not defined and are particularly troublesome as they could negate coverage for historic "Perils of the Sea". These are fortuitous accidents from "the seas (windstorm), fire, sinking, stranding and collision".

The result of this policy language problem is an increased number of unpaid claims, some of which end up in litigation. In one case I am familiar with, the insurer denied coverage for a sinking, alleging it was caused by a muskrat entering the exhaust and chewing a hole in the rubber connector to the muffler. The policy had an exclusion for loss caused by or resulting from vermin and obviously they considered a muskrat to be vermin. Careful examination revealed that the proximate cause of the water entering the vessel was a disconnected thru-hull hose. Months of expensive litigation resulted in a favorable settlement for the owner.

Another case involved a partial sinking after the boot connecting the exhaust from the riser on an I/O to the discharge through the outdrive failed from overheating, allowing a significant amount of water to enter the vessel. The owner and his passenger had to call the Coast Guard and evacuate the boat. The insurer denied coverage based on corrosion in the riser and a corrosion exclusion in the policy. The case went to trial and the Judge ruled for the insurer. The case is being appealed.

Yacht policies were not always so restrictive. Originally, all marine policies were written on a "named perils" basis. Eventually, yacht policies were written on an "All Risk" basis with very few exclusions. What has evolved is a so-called "All Risk" policy with a long list of exclusions,

including losses "resulting from" the exclusion. This is the crux of the problem, as now there are losses denied, which would have been covered in the "named perils" policies of years ago. The attempt to broaden coverage has taken a significant turn backwards. I believe this is largely due to many inexperienced people being involved with writing or amending yacht policies. I'm sure that some exclusions were adopted merely because some boat owners submitted claims that should not have been insured, so instead of relying on trained claims staff to deny such claims, they tossed in an exclusion. There is so much similar language in policies that it is obvious to me that copying one another has become the norm.

Ocean marine insurance is unregulated as it is considered part of interstate commerce. This means that insurers are free to offer their version of coverage, rates and terms without seeking any approvals from State Insurance departments, or industry associations. There is no doubt in my mind that insurers should be offering better coverage to boat owners. They need to be more mindful of including definitions where needed, eliminating exclusions that effectively avoid payment of "perils of the seas" losses, and require more training of their personnel with the nuances of marine insurance.

I encourage readers to examine their policies, identify language that concerns them, write to their broker or agent asking them to forward the letter to the insurer and ask for a written response. You might, in addition to questioning the muskrat exclusion, also ask what they mean by the "marine life" exclusion. It would be worthwhile asking if it is their intent to avoid basic "perils of the seas" losses even if one of the enumerated exclusions had some involvement in the loss. The biggest problem is the "resulting from" language, so please address that issue. By adhering in a strict sense to that language, an insurer can avoid a great many claims that in earlier days would have been paid without question. I believe that error in design, or manufacturing defect, that results in a fortuitous loss, is a latent defect. Some policies include loss resulting from a latent defect, but they exclude "error in design", and some exclude

"manufacturer's defect. Insurance claims personnel should read an extensive article on the subject by David Pascoe, whose web-site is www.yachtsurvey.com. If, after the written response, you are not satisfied with the answers, or your policy, ask your broker or agent to find better coverage from a different source. If the broker or agent does not have access to better coverage, change to a different broker or agent that does. Only pressure on insurers will bring about change. Yacht owners pay many millions of dollars to insurers each year in premiums and deserve policies that insure fortuitous events without having to resort to litigation. Let's hope a concerted effort from boat owners will achieve improvement and remove some of the worry about insurance.

Hypothetical questions to pose to insurance companies:

1. If, without any lack of maintenance, corrosion allows a fitting to fail and my mast collapses, damaging sails, spars, deck and hull, do I have a covered claim?
2. If, through stray current, electrolysis occurs causing a thru-hull fitting to fail and my boat sinks, am I insured for the loss?
3. If, through wear and tear, but not due to lack of maintenance, my propulsion engine fails and before I can effect repairs or get help, my boat is washed ashore and becomes a total loss, am I insured?
4. If, through the error of a repairer, galvanic corrosion occurs due to a steel, rather than a stainless steel bolt being used, and the resulting failure causes me to lose control of my rudder, with the boat ending up on the beach, am I insured for all the damage?

Reprinted with permission from Northwest Yachting Magazine February 2010 issue, page 74

