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## **Liability Issues Related to ETCP Certification**

The question has been raised as to whether ETCP certification actually increases a rigger's potential exposure to legal claims for injuries and damages. It appears that there is a significant undercurrent of opinion that getting this certification actually increases a rigger's liability exposure. There is no legal basis for this belief. Certification should actually decrease a rigger's liability exposure.

To understand why this is true, one must understand the legal basis upon which civil claims can be based. Claims against a rigger for bodily injury to a third person, or for property damage, can be based upon two primary theories: (1) an intentional tort and (2) a negligent tort.

An intentional tort would result where a rigger took an action by which he/she actually intended that another person be injured or that property be damaged. In such a scenario, whether a rigger was certified or not would have absolutely no effect on the validity of the claim. A lawsuit for an intentional tort would solely be based upon evidence presented on the issue of whether the rigger intentionally acted with a purpose to harm a person or their property.

The second theory based upon a negligent tort is where there may be some confusion as to the effect of certification upon liability exposure. Negligence is a legal term that simply means a person has failed to exercise reasonable care for the safety of others. It is often called the "reasonable man" standard and in analyzing a rigger's acts to determine if they were negligent, the question posed is "Whether a hypothetical 'reasonable man' properly trained as a rigger would have acted the same way?" If the rigger's action falls below the standard of what a reasonable rigger would have done, it is negligent and liability may ensue if an injury results from the sub-standard "negligent" act. Consequently, industry standards for rigging activity would govern how a rigger should perform his work without being legally liable for injury to others.

The somewhat prevalent misconception that a rigger increases his potential liability exposure based upon achieving ETCP certification might be based upon the misconception that when a rigger has obtained certification, he is held to a higher standard of behavior. This is not the case. Legally, the rigger is held to the same standard regardless of whether or not he has been certified. That standard is the industry standard that is established in a civil trial by the testimony of witnesses familiar with industry practice. It exists independent of the training and credentials of the rigger whose actions are being called into question by a civil claim.



As ETCP certification becomes more the norm, a trend which has clearly been established, its standards will become more determinative of the industry standard and will help define the "reasonable rigger" standard. The important thing to realize is that the industry standard that sets the threshold for acceptable versus negligent acts is an objective standard that exists independent of the training and certification of any individual rigger. Consequently, any rigger achieving certification is not by that act doing anything that would increase his own liability exposure. The only effect of certification for any individual rigger would be to increase that rigger's knowledge and skill in the craft of rigging thereby reducing the chance of his committing actions considered below industry standards.

Additionally, the fact that a rigger has been certified would be precisely the kind of evidence that would make the defense of a civil suit stronger. The rigger would be seen as better trained and more credible in the art of rigging making him a better witness.

In conclusion, the fact that negligence is determined by an objective standard and not by the individual qualifications of any rigger, in conjunction with the general impression that the certification creates a more highly respected witness, leads to only one possible conclusion, which is that ETCP certification can only reduce liability exposure for individual riggers.

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