

Preparing is Protecting

DEFEND YOUR COMPANY THROUGH PROACTIVE RISK MANAGEMENT

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LET'S FACE IT: when it comes to protecting your company against litigation, costly lawsuits, and risks that drive your premiums up, there's only so much you can control. Many of our insureds are renting out and operating heavy equipment on complex job sites where any number of machines, contractors, and operators are working at once. And in a world where you're more likely to win a huge sum of money in a lawsuit than in the lottery, the need to control what you can is increasingly urgent.

Fortunately, we at NBIS have long been committed to helping our insureds craft proactive approaches to risk management that help to ensure you're never caught off guard, including removing risks before they even occur. Here are some tried and tested ways to stay ahead of risk, and address it on your own terms – before an unpleasant situation forces you to.

1. CONTRACTS

Your contracts (mainly, your rental agreements) are your first line of defense. During the drafting process, employ a strategic approach from the start, and remain firm until the contract includes what you need to best protect your company. We all know that negotiating contract language can be a long and difficult process, but it's ultimately one of the most important things you can do before commencing work on a job site. A solid contract or job ticket should contain the following key provisions and terms.

Indemnification Or Partial Indemnification

(Requested by your customer): Many contracts have indemnity language which reads that a company will indemnify the lessor for any incident "arising out of" work done by the lessee (you). This can be problematic. "Arising out of" should be tightened up by using language such as "caused in whole or in part by", "caused by",

or the ideal language "solely caused by". In other words: change the phrase "arising out of" to something that requires some causal connection to the injuries suffered but does not require proximate cause in the legal sense.

Insurance (When included in your

rental ticket): An insurance provision in your agreement is the easiest way to shield your company from paying for claims that you do not owe. This provision specifies exactly what limits of coverage your customer needs to provide, the financial rating required of its insurance company (usually an A.M. Best Company rating) and in what circumstances your customer's insurance policy will extend coverage to you as an "additional insured."

Ground Conditions (Should be in your rental

ticket somewhere): Ensuring ground conditions language is in your daily rental ticket helps protect your operator, equipment and business. OSHA 1926.1402 states that ground conditions are the responsibility of the controlling entity, and the controlling entity must do two very specific things. Be sure you know what those two things are (by reading the standard) and put them in your contract. Additionally, ANSI/ASME B30.5 also requires that the Site Supervisor and Lift Director have the mandatory responsibility to provide ground conditions that are firm graded and capable of supporting the crane and its load.

2. PREVENTATIVE RISK MANAGEMENT AND TRAINING

Training is not only required by OSHA to be documented and continuous. It's an effective and efficient way to reduce and eliminate risky behavior before it comes back to haunt you. And, it's about mindset: Each

member of your team should be constantly thinking about risk and how their actions play a role as either proactive or reactive. If you're a company owner, you should be looking at your team and asking:

- **Drivers** – Are they all up to date on: CDL licensing, training, DQ files and hours of service logs? Use training to address some of the riskiest behaviors, such as distracted driving, and let your telematics data guide your training priorities.
- **Crane Operators** – How recent are: certifications, training, technology and lift plans? Are they trained and evaluated (as required by OSHA) on how to operate your specific equipment?
- **Risk Manager** – Is there a dedicated member of your team whose time is spent specifically on risk management? Are they focusing on: safety plans, safety meetings, accident/injury prevention checklists, inspection and maintenance records and technology?

3. NEW TECHNOLOGY AND SERVICES

The rise of technologies like crane cameras, telematics solutions, and dash cams have created a landscape where data gathered through these tools can in some cases be used against companies. But it doesn't have to be that way. Data gathered by your telematics tool can be used proactively to see where your drivers need improvement and spot potential problems before they arise. Tools like dash cams are often used passively and allow you to provide evidence and context for when you aren't at fault, so that you don't end up paying in court for someone else's negligence.

At the end of the day, failing to address obvious risks ahead of time is one of the easiest ways to end up having to pay to defend yourself in court or watch your premiums increase. NBIS can help you cultivate a proactive approach to risk management. Visit NBIS.com to learn more about our extensive suite of risk management tools.



ABOUT THE AUTHOR

Tyrone Silva is assistant vice president of risk management for NBIS and has over 15 years of experience developing risk solutions for crane and rigging, concrete pumping, and specialized transportation companies.

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