

Safety Programs: A Strong Bet

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IT LIKELY WON'T come as a surprise to learn that one of the most common barriers to the creation of a safety program at a company is perceived cost. Typically, the price tag associated with safety is viewed as an insurmountable obstacle. It is viewed as an "all or nothing" proposition that many companies say they just can't afford.

If this sounds like your company, have you ever considered that a safety program is actually an investment? Despite an upfront cost, an ongoing safety program, like any solid investment, produces dividends and returns over time. In fact, elements of a safety program such as driver behavior telematics; dashcams; various online safety training programs; and properly written rental agreements that reduce risk exposures are proven to produce great returns on the investment and can even end up saving your company money.

The NBIS Claims team has compiled two actual accidents that resulted in claims with successful outcomes. These successful claim outcomes were a direct result of the example company's investment in risk management tools and safety programs.

FACTS OF THE CASE – REVIEW #1

A large crane company was hired in May 2017 by a general contractor (GC) to provide a crane and operator to assist the contractor with a residential construction project in Arizona. A load of strand board was raised to the roof area of a two-story building as directed and signaled by the GC, who was the project superintendent. The crane operator being signaled was "in the blind" and could not see when landing the load. The plaintiff and GC tried to suggest that the load had not been completely unrigged and that the crane operator raised the strand board before being given a signal, causing it to break, and knocking the plaintiff to the first-floor concrete slab. The plaintiff sustained serious injuries, including traumatic brain injury. The plaintiff's damages were significant, with an exposure in excess of \$10MM for this Arizona venue.

The Defense – Early Investment in Risk Management: Rental Agreement Language

The crane company rental agreement contained a "Use of Equipment" provision wherein the customer lessee (GC) agreed to provide exclusive direction and control over anyone using the crane company's equipment, including the operator. The Claims team and

defense counsel mounted an aggressive breach of contract lawsuit and asserted the Arizona "borrowed servant" doctrine's application. The Arizona Appellate Court ruled that (1) there was a valid contract and the GC owed the crane company a defense and that (2) Arizona's borrowed servant doctrine was met and a special employment arrangement existed between the crane company and the plaintiff's employer, the GC. The court concluded the crane company enjoyed worker's compensation (WC) immunity. The crane company was dismissed from this \$10MM+ exposure claim wherein the plaintiff and co-defendants accusing the operator of causing the accident.

As you can see, making a nominal investment in developing meaningful rental agreements handsomely benefitted the insured crane company. The GC's insurance company reimbursed the crane company \$43,880.00 in defense costs with no incurred loss to the crane company.

FACTS OF THE CASE – REVIEW #2

A specialized transportation company was transporting a load on US Highway 98 in Florida. A head-on collision resulted in the death of the other vehicle driver. The trucking company's dashcam clearly showed that the other vehicle in the oncoming lane suddenly crossed the yellow center line, striking the trucking company's trailer at the left-side rear tandem axles, as the trucking company driver tried to move as far right as possible.

The Defense – Early Investment in Risk Management: Dashcams

The claim was closed primarily as a result of the powerful evidence recorded on the dashcam. Cost of the dashcam was approximately \$500.00. No claim was or will be paid because the insured trucking company invested in dashcam technology to defend its drivers and create safety awareness while they are driving.

As these cases illustrate, ongoing investment in safety programs and risk management tools more than pays for itself by reducing risk to your company and controlling insurance costs.

What do these positive outcomes mean? Suppose your company was involved in a terrible accident and ensuing litigation. The exposure is great enough to exceed your available coverage totaling \$6MM in available primary and excess limits. The facts are questionable. No dashcam exists to aid your

driver's version of events, or your rental agreement does not contain beneficial terms and conditions to protect your company and operator. Your insurance carrier decides to resolve and settle for \$4MM. Your excess layer is impacted significantly. Both your primary and excess insurance policy premiums jump 50+%. Now your insurance costs go by \$30,000 or more. These loss results stay with your company's performance history for 3 to 5 years and adversely impact your insurance costs.

On an average basis, typical account premium of \$63,000 subjected to a 30% increase (underwriting pricing example) is a year-over-year cost of an additional \$18,900 to your insurance costs. You can purchase the equivalent of 20 dashcams for this. You can send your drivers through online training courses for next to no costs. You can change your rental agreements for the cost of ink and paper and make sure your operators get them signed for negligible cost and effort.

Partnering with a broker that truly knows your business creates a powerful alliance. Trusting your protection to a Claims Team that aggressively defends your interests using risk management tools, seen in these examples, can be a formidable defense against forceful plaintiff attorneys who seek to cast your company in the poorest possible light should you be involved in a terrible accident. At the end of the day, investing in safety just makes excellent economic sense.



ABOUT THE AUTHOR

Art Kirkner is Vice President of Claims for NBIS. With over 35 years of claims leadership, Kirkner has built a reputation for driving a customer-service-driven claims team.

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