

NBIS RISK MANAGEMENT CASE STUDY TOOL

Key Points

1. **Fatality 44 Year Old**
2. **Overhead powerline contact**
3. **Contract language not updated**
4. **Favorable law applies**
5. **Power line observed when job was bid**

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Overhead Powerline Fatality Case Study

A series of relatively minor mistakes at a residential “spot development” project cost a construction worker his life and exposed critical flaws in effective risk management for crane companies. Even though the NBIS claim investigation team clearly established that the crane company and its crane operator did nothing wrong, the failure to use the proper contract language prevented them from winning an early dismissal in the subsequent Wrongful Death lawsuit.

Project:

Small residential “spot development” project. Homeowner was developing the vacant adjacent lot next to his existing single-family home. He was acting as an “Owner/General Contractor.” Framing contractor hired Crane Company to lift trusses to second level to complete initial phase of construction.

Facts:

Framing contractor discovered that the trusses were stacked out of order so he had two of his employees (one of whom was the plaintiff) remove two trusses from the stack and place them on the driveway of the Owner/GC’s existing home in order to get at the correct trusses in the stack. After the two mismatched trusses were removed,

they were placed on the driveway. The two workers then proceeded to tilt them over with the intention of laying them down on the driveway. While being tilted, the crane cable moved into proximity of an overhead electric power line. The cable arced with the power line causing fatal electrocution injuries to the plaintiff.

Risk Transfer:

The work ticket utilized by the Crane Company did not conform with NBIS Risk Management desired protocols and recommendations. Once the suit was filed against the Crane Company, NBIS Claims efforts to tender the claim to the framing contractor was not successful due to insufficient contract language on the crane rental agreement. Fortunately, due to favorable law that bars plaintiff recovery to only Work Comp benefits under Florida’s “Horizontal Immunity Statute,” the claim exposure to Crane Company was limited to liability only for conduct deemed Gross Negligence.

Case Resolution:

An effort to get out of case through dismissal of Gross Negligence allegation was successful as motion was granted by Court. As a result, the case was resolved with no

payment for damages but over \$100,000 in legal fees were incurred in prosecuting the required legal discovery and dismissal action.

Case Analysis:

Contract risk management process not followed which prevented claim from being tendered to the insurance carrier for the Framing Subcontractor. This would have saved all of the legal fees incurred in defense of this case. Fortunately, Florida law allowed for the opportunity to obtain a dismissal based on Horizontal Immunity.



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Exposure Limited Due To Favorable State Law Despite Poor Contract Language Overhead Powerline Fatality Case Study

Risk Management Lessons Learned: From the Crane Company perspective, there were three factual issues that serve as Lessons Learned from a safety perspective:

1. When Crane Company representative first bid the job, he did observe the power line and admitted that in his deposition testimony. He claimed that he did not think it would be a factor since it was not near where the lift was intended to take place. This prior knowledge of the existence of a potential power line hazard could have been a factor in a Court or Jury finding liability against the Crane Company if this case were evaluated based on a standard of general negligence. In addition, the Crane Operator had a duty to check for a power line hazard. In this case, the Crane Operator stated that he did not see the power line because it was apparently obscured by trees.

2. Once the impromptu staging area for rearranging the trusses was agreed upon, a supplementary risk assessment should have been performed by the all parties: the Owner/GC,

the Framing Subcontractor, and the Crane Company. This was not done and then the lift activity shifted from the original planned location to a secondary location to correct a mix-up of construction materials. The fact that the two Framing Subcontractor employees pulled the Crane load cable into the power line was the proximate cause but the failure to have foreseen this hazard could have been a factor were it not for statutory damage limitation under Florida's Horizontal Immunity law.

3. Contract management. In this case, there was no contract management done which increased the overall costs of the claim even though it did not increase the value of the claim from a damage standpoint. If the contract had been changed to include NBIS recommended language addressing Powerline Contact, then the Crane Company would have had an additional defense that would

have required the Framer to make sure the lines had been de-energized. Because of favorable Florida law, the inadequate contract issues did not result in additional exposure to the Crane Company. Had this claim occurred in a state other than Florida, the overall value based on the deceased plaintiff's background would have been in excess of \$1 million.

