NBIS is your property and casualty insurance provider for crane and rigging, specialized transportation, concrete pumping and equipment rental/dealers.

Every policy includes risk management solutions, industry-tested by our team of safety and regulatory experts.

Experience the Difference.
Risk Management Support System

The final word in proactively managing risk.

The RMSS is a comprehensive assortment of tools that policyholders can use to drive proactive steps to manage risk more effectively, reduce future insurance costs, and run a more profitable business.

**BENEFITS**

- Understand contractual risk transfer
- Understand responsibilities and requirements delineation
- Learn about regulations and compliance
- Easy claim reporting
- Comprehensive case studies
- Procedures and presentations to support your risk department

**RMSS HIGHLIGHTS**

- Subcontractor Review Manual
- OSHA Regulation Compendium
- Customizable Employee Safety Handbook
- Targeted Safety Training
- ASME B30.5, B30.27 industry standards of care
- Training documents and presentations

Contract Management

Effectively optimizing risk-transfer potential.

**BENEFITS**

- Optimize risk-transfer potential
- Assess enforceability
- Mitigate losses
- Protect against rising insurance costs
- Protect company assets

**KEY PROVISIONS**

- Indemnification clause
- Insurance provision
- Operation of equipment provision
- ASME B30.5 responsibilities
- Conditions – ground, power line, rigging
- No reliance on load-measuring devices
Do I know all the risk services offered by NBIS with my insurance policy?

Please read below to see how we partner with your company.

Contract Management Assistance
1. As part of your insurance policy with NBIS an in-depth legal review of your company’s current daily work or contract is conducted by NBIS Legal Counsel to ensure key contract provisions (i.e. indemnity, insurance, waiver of subrogation, ground conditions, etc.) are in place to reduce your contracted risk exposure. Once the key contract provisions are identified and cross referenced against your states’ applicable case law NBIS then redesigns your work ticket or contract with new preferred language, while keeping your design, logo and business terms consistent with the original document.

2. Deductible SIR Incentive (50% Reduction): If the preferred contract language is implemented by you resulting in an acceptance of tender of defense and indemnity by an indemnitee a 50% reduction is applied to your Deductible/SIR on your Commercial General Liability and/or Combined Commercial General Liability and Inland Marine policies.

3. Third Party Contract Review: As added value service, third party contract reviews are available to you upon request. A small fee of $150.00/hour is required for this legal service.

Risk Management Support System
(Thumb Drive Device and Online Portal)
Here you will find an assortment of tools like, how to negotiate contract changes, safety & regulatory management tools, a customizable safety manual, return to work policy, jobsite accident investigation guidelines, equipment accident guidelines, claims management tools and more

Free Online - Industry Specific Driver Training
This proactive driver training program is available 24/7 and is designed for drivers of mobile cranes, mobile pump trucks and tractor trailers. The program targets the most common high-risk driving situations and behaviors and contains a printable certificate to the driver at the completion of training. Included with successful completion of the training a 50% reduction is applied to your Deductible/SIR on your Commercial General Liability and/or Combined Commercial General Liability and Inland Marine policies for over-the-road claims involving mobile equipment, provided that, that, (a) the “insured driver” completes all the training courses within the 36 months prior to the date of loss, and (b) the mobile equipment is equipped with a NBIS-approved Driver Insight driver behavior telematics system or an operating external view camera or an operating lane departure/stopping distance alert system.

Loss Control Inspections
Loss control inspections are conducted by a member of our loss control team, but on occasion the work may be completed by a Loss Control Vendor hired by NBIS to supplement our staff. This type of loss control review reinforces your company’s safety culture and identifies opportunities to improve operations and loss prevention.

Free Access to Catalog of Online Safety & Health Training Courses
This program provides your employees with access to 150+ interactive training courses, including streaming video courses, for General Safety, Heavy Industry, Hazardous Materials and DOT. Find hot topics like Crane Safety in Construction, Rigging Safety, Fall Protection, Cargo Load Securement, Hours of Service Training, ELD basics, just to name a few. The training is available in both English and Spanish formats with full record keeping accessible 24/7.

As an added value service, for a small fee, you will have access to the OSHA 10-Hour Construction or General Industry training course.

Driver Insight Telematics Software
This program offers you the ability to monitor the driving habits of your employees once they leave your yard. With this device you will be able to track how your equipment is being driven, capture speeding events, hard braking events, hard acceleration including GPS tracking and geofencing. Easy & quick installation, this device can be used on any Equipment with a 12+ volt battery. Depending on your company policy there is an additional feature that will capture distracted driving while using a cell phone. This unit can be used on any equipment or vehicle but must be tied to the Employee’s cell phone by use of an app.

Dash Camera Discount Program
As a current NBIS policyholder you will have access to Falcon Eye dash cameras at a discounted rate. These HD cameras will allow you to record footage of critical events thereby assisting you with improving driver training, protecting your drivers and/or reducing false claims.

OSHA Litigation Support
Expert Legal Representation to assist you with fighting OSHA citations and applicable monetary penalties. Through our partnership with the law firm of Golberg Segalla NBIS can partner your company with industry experts with a proven track record in reducing and/or removing OSHA citations.

Risk Management.
Experience the Difference.
At the Specialized Carriers and Rigging Association’s (SC&RA) 2018 Crane & Rigging Workshop held in Louisville, KY in September, I gave a presentation titled: “Practical Ways to Protect Your Company from Lawsuits and Large Settlements.” The presentation was built on the premise that people today have a better chance of winning money in a construction-related lawsuit than by playing their local Lottery. With aggressive plaintiff attorneys chumming the waters by placing relentless television and billboard ads, and with the very real threat of nuclear verdicts, crane, rigging and heavy transport companies may be at more risk of a lawsuit now than ever before.

“Scary, right? The logical question, then, is this: How do you protect and defend your company in such a litigious environment?”

“Doing something because it’s the way you’ve always done it is a surefire way to guarantee you’re not doing everything you can to protect yourself, especially when it comes to the language in your rental agreement — the first line of defense for you and your employer. Having the right language in your rental agreement can literally mean the difference between paying an outrageous amount of money in a lawsuit and transferring your risk to the liable party. If you did nothing wrong, why should you have to pay to defend yourself and satisfy the costs associated with liability? Furthermore, why should you have to pay to defend your customer if you truly did nothing wrong?

The answer is simple: you shouldn’t. But companies end up paying for accidents they didn’t cause all the time — and at least some of those payments could have been avoided by doing something as easy as changing the language in their daily rental ticket.

“Doing something because it’s the way you’ve always done it is a surefire way to guarantee you’re not doing everything you can to protect yourself.”

“I know what you’re thinking. You’re thinking, “Why should I change my ticket since it’s working for me now?” or “No one will sign my ticket if I change it.” I know. I’ve heard it all before. But the reality is that what’s working for you now might not work for you later (when it’s really needed: during a contentious lawsuit) and someone will sign your ticket because the work needs to get done. So what changes need to be made?

“Words matter, so change them.”

You may have noticed that 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. The general consensus is that the phrase “arising out of” should be tightened up by using language such as “originating from”, “growing out of”, “flowing from,” or “done in connection with” — meaning: 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.

Train and document
Training and documentation are keys to success both in continuing to educate your employees to prevent accidents and injuries and to protect your company from the tactics that will be used against you in a third party claim. For instance, hiring a CDL driver and thinking that you are done will only get you into trouble.

Training is lifelong learning and you as an employer have an obligation to provide it and document it, not doing so gives them a great platform to show your company in a bad light, don’t let that happen.

If we’ve learned anything as an industry over the years, it’s that we need to continue adapting. Standards and laws are constantly changing, and so is technology, so making sure that you’re doing all you can to protect yourself from a contractual standpoint isn’t just smart, it’s necessary.

As we come to the end of the year, look back on what’s occurred over the last 11 months and ask yourself what might have changed if you had a different contract. While you’re at it, assess how much training you’ve done and whether or not you need to do more.

As always, feel free to contact me, or any member of the risk management experts at NBIS, to learn more about changes you can make to your rental agreement. Contract management is just one of the many ways NBIS is different. To learn about the myriad other differences, please call 877.860.RMSS or visit us online at www.nbis.com.
The NBIS USB Drive - Risk Management Solutions at Your Fingertips

All NBIS insureds receive the full suite of RMSS materials on a preloaded USB drive, making it easier than ever to enhance your safety and risk programs.

All RMSS materials are powered by NBIS’ team of experts and backed by decades of experience.

Concrete Pumping

Crane & Rigging

Specialized Transportation
Important Changes to Contract Language

Don’t be left exposed. Fully protect your company by implementing the following changes to your contract language.

As part of NBIS’ ongoing commitment to building a stronger defense against potential claims brought against your company we have made several revisions to our preferred contract language that we believe, based on our experience in handling claims for the crane and rigging, concrete pump, and specialized transportation industries, will place your company in a better position to defend and protect your business. We have added additional key contract provisions to address the following critical areas:

1. **Ground bearing pressure**
2. **Duration of contract terms and conditions**
3. **Subcontractors**
4. **Entire agreement clause**

Below is a summary and rational for the key contract provisions that will be added to your contract that will have a positive impact on your defense. *(Please contact our office if you would like these changes made to your existing rental agreement)*

1. **Ground Bearing Pressure:** The Federal Government under OSHA 1926.1402 places the responsibility for ground conditions on the Controlling Entity, likewise, the ASME B30.5-2018 states that Site Supervisor and/or Lift Director are responsible for ensuring that the operating area for the crane is suitable for the crane with respect to levelness, surface conditions and support capabilities. Given that both Fed OSHA and the ASME B30.5-2018 set a requirement for ground conditions that can adequately support the Equipment and place that responsibility on designated parties this new wording in industry standards and Government regulations are a true benefit to our crane industry however, we must change the way we communicate what is required to the customer. We as the Equipment provider, and owner, need to supply the Customer with the appropriate ground bearing pressure required to adequately support the Equipment. In many claims we would have been successful in transferring the ground condition liability if we would have provided the required Ground Bearing Pressure needed to support the crane. In lift plans or critical lifts this is usually performed but not in taxi crane or concrete pumping service. We need to change the way we do business and use these tools and this new language to our advantage and work smarter.

2. **Duration of contract terms and conditions:** We will also be adding to your contract a duration of project provision that binds the Customer to the terms and conditions for the duration of the project absent the Operator getting the contract slip signed daily. We have all seen situations where the Operator gets the slip signed Monday through Thursday but fails to get the slip signed on Friday. On Friday there is an incident and unfortunately the slip wasn’t signed by the Customer, this scenario makes for an uphill battle when trying to get a reviewing Court to rule favorably on enforcement of the daily contract terms. It is more probable than not that a reviewing Court may reasonably determine there is no contract in the absence of the signatures of the contracting parties on the day of the incident. This new addition will extend the Terms and Conditions throughout the duration of the project.
3. **Subcontractors:** We have added a signatory line for Subcontractors to now establish a contractual relationship between the Crane or Pump Company and any unrelated 3rd Party Subcontractor who has been hired by the Customer to work in conjunction with the Crane or Pump Company to perform their work. Specifically, we have modified the indemnity and insurance provisions to account for these situations and to properly protect the crane or pump company where you may have a relationship with the customer that rented the crane or pump but not the company that uses the equipment. Now we will have either/or in a contracted relationship to help defend your business.

4. **Entire Agreement Clause:** We have added to your contract a superseding clause to address those situations wherein multiple contracts are in play; the superseding clause added to our revised contract language will assist us in positioning the crane rental contract as the prevailing document superseding all prior oral and written understandings.

In the interim should you have any questions and/or concerns regarding the recommendations feel free to contact the NBIS Risk Management Department.

**Most importantly,** after you have reviewed these new changes and you feel as though they can help protect the company you own from liability that may have been out of your control, please contact us and we will make the necessary changes to your existing rental tickets/contracts. Contact us at 877-860-RMSS (7677)

**Sincerely,**

**NBIS Risk Management**  
RMSS Support Line - Toll Free: 877-860-RMSS (7677)  
RiskManagement@nbis.com

**24/7 Claims Hotline:** (888) 567-7285

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**DISCLAIMER:** The recommendations provided herein have been reviewed by NBIS in-house counsel and found to be compliant with the requirements of applicable state law. In sharing the enclosed recommendations with you, NBIS is not providing legal advice or engaging in the practice of law. By sharing the information contained herein, NBIS is only providing commentary on areas of concern arising from the proposed transaction. You may, at your option, incorporate these provisions into your existing agreement. NBIS recommends that you review the enclosed with independent counsel of your choosing. Failure to do so may result in the waiver of legal rights which may otherwise have inured to your benefit.
Agents do matter

Bill Smith discusses how your insurance agent can make your life easier.

Securing insurance for your crane, rigging, or transport company is probably not your favorite annual task. We get that. Buying insurance is expensive and takes up valuable time. It can also be confusing. Between coverage choices, terms and conditions, claims scenarios, contracts, loss control and risk-management efforts, there’s a lot to think about.

The good news, though, is that you don’t have to think about it alone. A good insurance agent is there to answer your questions and knows the nuances of insurance – and the nuances of your business.

Jeff Haynes, national heavy construction practice leader for USI, a leading insurance brokerage and P&C consulting company with 150 offices across the country, understands this precisely.

“Heavy construction companies should look for an agent who understands the industry as an industry, and not simply from an insurance standpoint,” he said. “They should be able to advise them on critical items like OSHA rules and regulations and ASME standards. They should also help incorporate those rules, regulations and standards into their contracts in order to develop meaningful risk-transfer tools.”

In the heavy construction universe, every company, every situation, every need is different. Businesses are located in different parts of the country and companies work on different types of jobs. A good agent knows this, and a good agent also knows exactly how each one of these factors affects your business – and ultimately, your insurance needs, which almost certainly involve contracts.

“A good agent will advise the insured on the proper contract terms and conditions needed to assume and transfer risk accordingly,” said Haynes. “The agent should also be actively engaged in claims strategy, litigation management, and any sort of contract-redrafting that needs to occur.”

Experience matters

Of course, good agents are also in the relationship business – and good relationships are born of time and experience. Experienced agents – meaning those who have been around for a while and have done business with other companies like yours – will have high levels of credibility with market partners so that when they submit your information for renewal the underwriter receives a meticulously prepared file that’s ready to quote competitively.

“Experience matters,” said Haynes. “You can’t teach experience. Companies should look for an agent who has extensive references within their particular niche – a crane broker who can dissect the actual scope of work that you are performing at a job site while using the standards and rules that apply to the parties on the job to transfer risk accordingly.”

“It’s important to know that the agent you choose is prepared to answer any questions that arise during the insurance-buying process, but equally important is your agent’s ability to properly and strategically advise you through any claims scenarios that may occur. Haynes explains that a typical insurance agent will sometimes advise you on what insurance coverage you need to purchase to fulfill somebody else’s contract demands, rather than the other way around.

“That said, when there’s an accident and you have the right agent,” he explained, “they’ll have the knowledge and expertise to work with your carrier, using a network of industry specialists, to navigate to your best result. A good agent will help make sure that all the engineers, adjusters and lawyers working on your claims are well versed in the crane and rigging industry and working together. Having the right agent helps give insurance buyers control of their total cost of risk now and in the future.”

When time comes to review your policy for renewal, ask questions and make sure your agent is working for your business’ best interest. For an agent referral or more information on available coverage or available agents visit us online – www.NBIS.com or call 866.668.NBIS for more information.
As a current NBIS policyholder, you have exclusive access to FalconEye cameras at a significant discount.

Why dash cams?
The use of dash cams is continuously increasing, especially among fleets—and for good reason. Not only can dash cams give insight into what actually occurred during a critical safety event, but they can also enhance driver-coaching programs and improve fleet safety.

Installing dash cams in your fleet is a clear sign that you’re serious about fleet safety.
Dash cams also provide five specific benefits:
1. Help reduce false claims
2. Incentivize safe drivers
3. Improve driver training
4. Speed up insurance claims
5. Protect drivers

Available Discounts

ONE-TO-FOUR CAMERA DASH CAMS
- 1080P DVR DASH CAM
- ORB WIFI GPS DVR DASH CAM
- PINNACLE 4K WIFI DASH CAM w/ GPS
- 3rd GEN Dual DVR DASH CAM
- 2 CAM PRIME 1080P DVR DASH CAM
- PINNACLE 4K DUAL WIFI DASH CAM w/ GPS
- TRIPLE (3) CAM 1080P DASH CAM
- QUAD (4) 1080P DASH CAM SYSTEM
- 4 CAM PRIME 1080P DASH CAM SYSTEM
- PINNACLE 4K QUAD WIFI DASH CAM w/ GPS

TWO-TO-EIGHT CAMERA DVR SYSTEMS
- 2-4 CAM WIRED DVR SYSTEM WITH 9” LCD
- DIGITAL WIRELESS 2-4 CAM DVR SYSTEM w/ 9” LCD
- MOBILE DVR (MDVR) SYSTEM w/ 3-4 CAMS & 7” LCD
- MOBILE DVR (MDVR) 1080P SYSTEM w/ 4-8CAMs

For pricing or to learn more about the NBIS FalconEye Camera Discount Program, contact an NBIS Risk Management Specialist today. Visit NBIS.com or call 1.877.860.RMSS (7677).
The troubling truth of crane cameras

Bill Smith: ‘We have a duty to protect our operators.’

As a former crane operator, ASME B30 Committee member and current risk management professional, my allegiance is to operators and the safety of the industry I’ve been part of for the last forty years. It’s through that experience – in the field, the boardroom and in the courtroom – that I’ve formed the opinions I have regarding crane cameras. To be clear, my opinion isn’t about cameras in general (NBIS promotes dash cams), but on-hook crane cameras that are marketed as solutions that let the crane operator see “the whole lifting site” while getting “a close-up view of the rigging.”

Nature of the task
The problem for me begins with the nature of an operator’s task. Unlike the driver of a car or truck, who is someone who has individual control over their vehicle, a crane operator is dependent on many other people and factors to complete a safe lift. The signal person, the rigger, the lift director and the ground crew receiving the load all play a part in the lifting process.

My concern, which I think should be everyone’s concern, is that the claim crane-camera manufacturers are making (both formally and informally) – that crane operators will no longer be working “in the blind” – will result in significantly more litigation for the crane company and reverse the progress we’ve made as an industry. In situations where the operator is meeting his or her responsibilities by operating the crane in a slow, safe, stable and secure manner, within capacity, not overloaded and following the signal person’s directions, the crane camera can become the weapon used against the operator in court. Envision the plaintiff attorney asking the operator, “But didn’t you have a camera that allowed you to see everything going on? So why didn’t you prevent this from happening? Why didn’t you stop? The ultimate responsibility lies with you.”

I know from the experience I’ve gleaned during the thousands of depositions and mediations I’ve been involved in that crane operators are often demeaned and condemned by attorneys who are constantly looking to place the onus and blame directly upon their shoulders.

In fact, this is part of the reason the ASME Committee worked so hard – for a decade mind you – to change the pre-2007 wording which said “the operator is [to be] held responsible for everything under his direct control…” The Committee knew for a fact that this phrasing was demonstrably inaccurate and revised the wording to develop and establish new responsibilities for all individuals involved in a crane lift. Now the crane owner, crane user, site supervisor, lift director, rigger, signal person and crane operator each have delineated responsibilities for safety when using a crane (and rigging) to make a lift. It’s also worth noting that prior to 2007, when the ASME standards language put all the responsibility solely on operators, a sizeable portion of ASME crane standards sales were to plaintiff law firms. Why? Because the wording worked entirely in their favor.

Defense of the operator
Thanks to the work the ASME B30 Committee did with input from key industry stakeholders across the nation, crane owners today can use these standards to defend their operator when they are truly not at fault. By purporting that crane cameras give the operator the ability to see the load, rigging, people around the load and the area where the load will be set, crane camera manufacturers appear to be moving us backward. They’re essentially saying that operators can know, do and see it all – when the reality is they can’t.

Operators deserve to be protected. If there is an accident involving a crane with a camera, the legal attack plaintiff attorneys direct at that operator will be intensified. It’s simply the way litigation works. While we ultimately don’t know how that scenario will play out, we do know this: several camera companies are using marketing verbiage that should make us all deeply uncomfortable. One manufacturer claims that “cameras can supplement the work of the signalmen/riggers who may not be cognizant of all the surrounding safety hazards.” Another writes: “Additional vision solutions provide more comfort for the operator, who will not have to depend as much on receiving instructions.”

Not the best we can do
At least one camera manufacturer has already stated that “knowledge of danger is proof of liability.” What does that mean? It’s impossible to know exactly, but it could be taken to mean that if an operator is operating a crane with a camera when something happens, an argument can be made, and most likely will be made, that the operator knew about the danger and is therefore liable. Or conversely, if it is meant to suggest that if you as an owner don’t purchase their cameras you are already presumed to be liable, neither suggestion is good for this industry and should be taken into consideration. Crane cameras aren’t the best we can do for our operators. In fact, they might be the worst we can do. So, before you purchase and implement them as a solution in your business, consider all we’ve done to protect operators up to this point and proceed with caution. An operator will probably thank you.
NBIS Driver Insights
A Proven Telematics Solution for NBIS Policyholders

Maximize efficiency, reduce costs, and increase profits with telematics

NBIS Driver Insights, powered by Octo, is one of the most dominant telematics solutions on the market today. It’s now available to NBIS policyholders at a discounted cost.

Implementing a telematics solution improves the efficiency and productivity of your fleet. It also helps your company reduce its overall fuel consumption, improve driver safety, and limit unauthorized asset utilization by leveraging location and driver behavior data. Telematics also help you:

- Know where your vehicles are at all times, from anywhere
- Serve customers better with accurate and intelligent logistics
- Improve driver safety and prevent accidents using contextual driving behavior data

A powerful, intuitive fleet-management dashboard

NBIS Driver Insights’ interactive fleet-management console provides vehicle and driver behavior data at the individual, fleet segment, or entire fleet level. The console helps locate vehicles, monitor performance, and support drivers using real-time location, usage, and vehicle health data. The fleet-management console also helps:

- Manage vehicles, costs, and maintenance
- Improve driver behavior
- Provide roadside, emergency, and crash support to drivers

Three reasons to implement NBIS Driver Insights:

**REDUCE RISK**
Reduce driving risk through tailored feedback based on actual driving behavior while also curbing unauthorized asset utilization through location monitoring, geofences, and curfews.

**IMPROVE FLEET MANAGEMENT**
Improve fleet efficiency and effectiveness with better visibility into where your vehicles are, how they are being used, and who is driving them.

**REDUCE FLEET TOC**
Drive down the total cost of ownership for your fleets with detailed asset and trend reporting, resulting in lower fuel usage, fewer accidents, and better maintenance.

The benefits of telematics are no longer theoretical – they’re now tried and true and part of the NBIS bundle of risk management services. For more information on systems and the NBIS Driver Insights Program, visit NBIS.com or call 1.877.860.RMSS (7677).
In 1996, the year NBIS became the exclusively endorsed provider of insurance and risk management services to the Specialized Carriers and Rigging Association (SC&RA), NBIS embarked on a now-decades-long journey: to provide superior insurance and risk management solutions to the crane, rigging and specialized transportation industry.

NBIS has held fast to that mission over the last 23 years – expanding our product offering and adding a plethora of risk-management tools – but we’ve also cemented ourselves into another important role as well – as industry defenders. We’re constantly surveying the regulatory landscape to see how new rules and regulations can affect our industry, and we do everything we can to fight from the front lines.

What that means for you is that NBIS has participants on ANSI and OSHA committees, and they use their industry knowledge and lessons learned from twenty-plus years of defending policyholders to argue for meaningful change. Many of our senior managers came from the field, as either crane operators or drivers, which means they understand issues in a way that most insurance company employees don’t.

Improving risk profiles
One of our primary objectives as an insurance company is to provide the finest insurance coverage available while improving the risk profile of our policyholders. The changing safety, regulatory and technology landscapes give us opportunities to both educate and provide coverage. And we’re constantly looking for new ways to provide our clients with options to manage their risk – not simply a one-size-fits-all product.

In recent years, we’ve invested heavily in technology – specifically, in online training technology. We now offer online driver training, telematics solutions, online safety and health training, and a whole host of other risk-management offerings.

I like to say that the company that insures you doesn’t matter until all of the sudden it does. What I mean by that is that insurance is largely just a commodity until a claim occurs – and then it very much matters which insurance company is insuring you. If your insurer doesn’t know the ins and outs of your particular business and industry, how can they possibly know how to put together a solid defense on your behalf? And how can they possibly know which risk management tools you should be using? And to take it one step further, how could they possibly know how to defend you and your industry?

I, of course, have a vested interest in the response to this question, but I think the simple answer is they won’t, and they don’t. But that’s 100 percent not the case with NBIS. The team of claims experts in our organization have managed and adjudicated a significant number of industry claims for our policyholders – of all types, sizes and monetary values. And they’ve often found themselves in situations where they need to practice what they preach; that is, to do everything they can to mount the right type of informed, expert claims defense when they feel their policyholder isn’t at fault.

Industry defenders
Ultimately, that’s what you as an industry stakeholder deserve – a company that will defend you and your industry every chance they can. As SC&RA’s exclusively endorsed insurance and risk management provider, we made a promise to do that, and more, 23 years ago, and we’ve done it ever since. To sum it up: we’re here for you as industry defenders.

To learn more about all the ways in which NBIS is defending and fighting for change in the crane, rigging and transportation industry, or to learn more about our growing list of risk management tools, contact the NBIS Risk Management Team today at 877.860.RMSS or www.NBIS.com.
We don’t just believe in training. We invest in it.

Using proprietary claims data, we developed one of the most comprehensive online driver training programs available today. Designed by some of the country’s foremost transportation experts, the NBIS Online Driver Training modules are specifically formulated for drivers operating:

• Mobile cranes
• Heavy haul tractors
• Concrete pump trucks

Benefits upon benefits

• Available 24/7
• Courses take 15 minutes to complete
• Full tracking and reporting
• Trains employees to be aware of the hazards associated with their vehicle
• Customized to the type of vehicle your employees drive

Eradicating high-risk behaviors through training

The NBIS Online Driver Training Program targets the most common high-risk driving situations and behaviors and illustrates practical ways to deal with and avoid them. For mobile crane drivers, concrete pump truck operators, and heavy haul tractor drivers, we offer five customized courses:

• Stopping Distance
• Changing Lanes
• Backing
• Distracted Driving
• Introduction to CSA

The benefits of online training are no longer theoretical – they’re now tried and true and part of the NBIS bundle of risk management services. For more information on systems and the NBIS Online Safety & Health Training, visit NBIS.com or call 1.877.860.RMSS (7677).
In my role at NBIS, I spend a fair amount of time working with industry stakeholders on issues related to risk management. I’m constantly looking at claims scenarios and analyzing what could have been done differently so I can take what I’ve learned and help companies better manage their own risks. So as we move into the third quarter of 2019, here are three topics I’ve been thinking about lately that should be on your radar as well.

1. Lottery as lawsuit
You may have heard me say this before, but I can’t stress it enough: today’s lottery is the lawsuit. What I mean is that you no longer have to win the lottery to get mountains of money; when it comes to incidents with cranes, you can simply claim that you suffered just about any injury and essentially have the same financial windfall as when you win the lottery.

When an incident occurs and people are injured, once the fault is proven to be yours, you should absolutely pay your fair share. I’m not questioning that. But I want to point out that the challenge many companies face today isn’t paying their fair share; it’s paying their unfair share. There are often myriad unseen, uncontested so-called “injuries,” like general aches and pains and soft tissue issues, that surface after the incident has occurred. These injuries often come with additional expenses from lawyers, physicians and therapists that may appear to be working together to maximize the insurance payout.

To underscore my point, consider this: At a conference recently, one of our vice presidents in the claims department asked a panel of doctors how many patients under care during an ongoing lawsuit follow up with care after the suit is settled. The answer? Not many.

2. Paperwork matters more than ever
What are you using to conduct your business and get paid for your services? If you have paperwork between you and your customers, like an invoice, rental ticket, job ticket or lease agreement, and if you are getting signed like you should be, then you need to ensure you have the right terms and conditions, or you run the risk of not being fully protected.

I can’t emphasize enough how the right wording matters. It may not only get you out of the claimed liability in an accident, but it may also result in reimbursement for your expenses. I’ve repeatedly seen where companies are getting signatures on paper with obsolete or missing terms and conditions. If that’s the case, then the old saying is true: It’s not worth the paper it’s written on.

3. Train, train, train
Training is a key element in reducing accidents and exposure to risk, and affecting a more favorable claim history. OSHA requires that training be conducted, documented and continuous. Many times, companies are so busy working that training is done much too briefly – in a tool box talk most of the time – and seldom done in a more formal setting. Sometimes, companies skip it altogether. Other companies don’t invest in training because they feel like it’s not worth the financial risk since employees may ultimately choose to leave.

Companies would be wise to look at different training technology solutions where employees can learn on the go. Drivers and crane operators have down time during the workday while they’re waiting on customers, and it’s during these times that they can train from a mobile device. This not only helps to refresh the employees’ skills, but it also complies with OSHA’s requirements and adds to the defense of your company.

NBIS provides support to policyholders in all three of these areas with claims, contract management and electronic safety and health training. We also offer many more driver services aimed at making you a better risk: telematics, driver training, internet-based D.O.T. support and vehicle cameras for event recording and OSHA citation representation. (Some of these are available at an additional fee.)

To learn more about what’s been on my mind, or to ask questions about these or any other topics, reach out to me or any other member of the NBIS Risk Management Team today. Visit www.NBIS.com or call 877.860.RMSS.
A new partnership for the “best fighting chance”

When we say that we’ve got our policyholder’s best interests in mind, we really mean it. Which is why we’ve partnered with the Goldberg Segalla law firm. For a reasonable, discounted fee—as an NBIS policyholder—you can now have access to some of the best OSHA-specific legal representation in the country to assist you in fighting OSHA citations and fines.

Alleviating OSHA concerns

If OSHA shows up at your site or facility for any reason—a serious accident, a fatality, or even simply because of an employee complaint—you’ll have access to a trained and experienced attorney who can walk you through the process, every step of the way.

What can Goldberg Segalla help you with?

• Litigating contested OSHA citations with Department of Labor attorneys before the Occupational Safety and Health Review Commission (OSHRC)

• Negotiating with OSHA and Department of Labor attorneys for the withdrawal and/or settlement of citations

• Representing employers throughout the OSHA enforcement process, including the initial inspection, issuance of citations, and subsequent analysis of defenses and strategy

• Managing OSHA inspections for employers, regularly appearing on-site immediately after catastrophic accidents, including those involving multiple fatalities

• Counseling employers on their rights and responsibilities under OSHA

• Providing day-to-day OSHA counsel on the myriad OSHA issues facing employers, including any changes or developments in occupational safety and health law

Spearheaded by one of the best attorneys in the business

Michael Rubin, CSP, CHST
OSHA and Worksite Safety Practice Group Chair
mrubin@goldbergsegalla.com
716.844.3477

• Certified Safety Professional (CSP) with 20 years of litigation experience; proficient in litigation before the Occupational Safety and Health Review Commission

• Advises and represents employers across multiple industries and around the country in connection with OSHA inspections, investigations, and enforcement actions

• Develops and audits safety programs and policies and counsels employers on related risk-management strategies

• Hands-on experience managing accident investigations— including those involving multiple fatalities— and regularly represents employers before, during, and after the OSHA inspection process

• Regularly contests citations on behalf of employers and negotiates for the withdrawal and/or settlement of citations

For more information on the NBIS/Goldberg Segalla partnership, visit NBIS.com or call 1.877.860.RMSS (7677).
Understanding the ‘Reptile Theory’

Bill Smith discusses how to protect your company from a frustrating legal trend.

In the book, *Reptile: The 2009 Manual of the Plaintiff’s Revolution*, Don C. Keenan and David Ball make a case for persuading jurors by appealing to their “reptile brains,” the “oldest” part of the brain and the part responsible for primitive survival instincts. In their books, videos and seminars, Keenan and Ball advise plaintiff attorneys to demonstrate to jurors the immediate danger posed by the actions of defendants because, as they write, “when the reptile sees a survival danger, even a small one, she protects her genes by compelling the juror to protect herself and the community.”

According to various sources, Reptile strategy has taken the plaintiffs’ bar by storm. This is at least in part because Reptile theory asserts that you can prevail at trial by speaking to – and scaring – the primitive part of jurors’ brains, commonly understood as the part of the brain they share with reptiles.

How it works

At this point, Reptile strategy is no longer new, and it has been widely used in negligence cases, including those involving personal injury, products liability and commercial transportation. In Texas, Reptile theory is often used, with varying degrees of effectiveness, and it is being spread throughout the other 49 states.

The common thread amongst these varied types of litigation is that each category of defendant – healthcare providers, manufacturers and those who transport goods on public roadways – all have potential impact on every single juror. Everyone needs healthcare.

Everyone purchases goods. Everyone travels on road. These make for ideal characters in the Reptile narrative because they not only impact (positively or negatively) the individual jurors and their loved ones, but also the community as a whole.

Make no mistake: Reptile strategy is designed to take your business and tear it apart from within. Plaintiff attorneys are trained to look at everything you say you do, find what you actually didn’t do and then use it to paint a picture of your company that makes it appear that you’re more concerned with profit than safety.

The ideal defense

While Reptile theory is frustrating and alarming, it’s also something that you can prepare for in your day-to-day business. Here are a few of the many ways you can bolster your protection efforts.

1. **MAKE SURE YOU KNOW EXACTLY WHAT’S IN YOUR SAFETY PROGRAM.**

   When was it created? Are there things in the manual you no longer do? Are there things in there you have never done? Be sure it’s current, effective and won’t be used against you. Do what you say you do or take it out of your manual.

2. **MAKE SURE YOUR AGREEMENTS, CONTRACTS AND WORK TICKETS ARE SIGNED.**

   If it’s not signed, it’s not executed. If it’s not executed, it can’t protect you. Don’t make the mistake of going through the effort of having a contract, rental ticket or agreement and then not following through with getting it signed. There’s far too much on the line.

3. **MAKE SURE THE CONTRACT LANGUAGE IS RIGHT.**

   If you’re going to the trouble of getting something signed, make certain the language can actually protect you. Your terms and conditions should be up to date, state-specific and provide optimum company protection.

4. **TRAIN, TRAIN, TRAIN.**

   Continual training is critical. Take advantage of online training programs that allow employees to train when it’s most convenient for them. Have employees take advantage of training on bad weather days, whenever there’s down time on the job, when they’re waiting for loads or when they’re sitting in a crane for hours with an empty hook. Be sure to document the training as well.

Don’t scramble, prepare

Many of the companies I come across are really good at what they do. However, instead of preparing for the probability of an incident by implementing prevention strategies via training, documentation, intervention or even discipline, they often end up reacting to an incident after it’s happened. This is what Reptile strategy thrives on – the fact that you’re scrambling after something has happened. The best way to counter this is through basic, run-of-the-mill preparedness.

If you’re looking for additional ways to be counter Reptile strategy, or if you’d like to learn about other ways you can train your employees to protect your company from plaintiff attorneys, reach out to me or one of the other risk management team members at NBIS.
Case Study & Claims Outcome Review

Description—Dashcam Footage, Merge

Facts of the case:

- Plaintiff Driver entered/merged into lane of the client’s vehicle. Rear end collision occurred.
- Defendant used dash/cab cameras as regular protocol.
- Plaintiff Driver alleged the insured driver merged into the lane hitting the plaintiff’s vehicle.
- The Police Officer used the dashcam video to aid his on-scene investigation and cited the claimant driver as evidenced in the Crash report.
- The Plaintiff attorney withdrew representation upon seeing the evidence.

What would you do?

But for the dashcam video, the claim examiner would have been presented with a “driver vs driver” position with the rear-end damage favoring the injured claimant’s story and the public’s general dislike of the big trucks unless shown differently by compelling evidence.

Since Florida is a pure comparative fault jurisdiction, the claim examiner would rightfully have approached this as 75/25 adverse to the insured with a neck and back soft tissue injury exposure involving an attorney that would have seen a reasonable injury reserve of $25,000 and the property damage being paid. In this situation, the claim file was closed “no pay”.

“Who insures you doesn’t matter, until all of the sudden it does.”

Bill Tepe, NBIS President & CFO

Over the years, we have seen several advancements in driver technology. The information contained in these devices is ever evolving and is also discoverable.

NBIS offers partner discounts:

- Cameras outside the cab and down the truck to record incidents and help determine liability (passive management),
- Telematics systems to understand driver behavior, so you can coach your drivers to avoid bad driving habits leading up to an accident (preventive management).

Outcome of Case

An excellent example of the benefit of the dashcam recording the truth. The important outcome for the insured was that there was no incurred loss on their claims history to adversely impact premium.
Case Study & Claims Outcome Review

Description—Oversize Load, Side Swipe

Facts of the case:

- Plaintiff Driver entered opposite travel lane of the client’s oversize load. Sideswipe occurred.
- Defendant Load clearly marked with flags and banners.
- Defendant had Escort Vehicles present.
- 2 witnesses on scene, one favorable the second unfavorable.
- Fatality involving pastor’s wife, mother of 9 and grandmother of 27.

What would you do?

Elements of a fatality accident include runaway jury anxiety due to jury shock over accident details. Focus on the long-distance view of the result rather than the short view of the anxieties.

Demand for this fatality was set at a multi-million dollar level. Case was sent to trial and was defended based on the safety standards in place: the defendant’s slow rate of travel, escort/pilot cars to oversize banners and flags.

Outcome of Case

Case was settled in the defendant’s favor, difficult and emotional result. Swift claims response and on-scene evaluations & documentation contributed to the final result.

“Who insures you doesn’t matter, until all of the sudden it does.”
Bill Tepe, NBIS President & CFO

Being the first responder to a claims event carries with it a great deal of responsibility.

It’s important for management to develop a Jobsite Accident Response Plan prior to the claim event, so that critical information can be gathered in a calm and systematic way.

Severity claims response is most effective when it utilizes a pre-planned approach. While safety and accident prevention are the core focus of the plan, a good response plan contemplates multiple scenarios with two key objectives in mind: preserve evidence and “set the table” for the investigative team.
Case Study & Claims Outcome Review

What’s In Your Contract/Job Ticket?

Facts of the case:

- Plaintiff bare rented a Manitou 10210 telescoping boom forklift from the NBIS insured, as had occurred many times over the last few years.
- The bare-rented forklift was involved in an accident under the operation over the road.
- Injuries included soft-tissue of the neck and back.
- NBIS Insured rented the equipment with specific contract language requiring indemnity and named as additional insured.
- Demand and tender went back and forth for nearly two years.

What would you do?

Without the NBIS preferred contract requiring indemnity and be named as an additional insured, the NBIS policy would have been be primary since traditionally, the coverage follows the vehicle. However, the defense and indemnity of NBIS Insured was eventually accepted by AIG/Starr Indemnity because of the contractual obligation to indemnify NBIS Insured and that CCA’s policies were primary by contract.

The claim was settled, provided the release and stipulation of dismissal noting dismissal and release in favor of the NBIS insured.

“Words matter, so change them in your favor.” Billy Smith, NBIS EVP Claims & Risk Services

Doing something because it’s the way you’ve always done it is a surefire way to guarantee you’re not doing everything you can to protect yourself, especially when it comes to the language in your rental agreement – the first line of defense for you and your employer.

You may have noticed that 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. The general consensus is that the phrase “arising out of ” should be tightened up by using language such as “originating from”, “growing out of “, “flowing from,” or “done in connection with” – meaning: 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. Having the right language in your rental agreement can literally mean the difference between paying an outrageous amount of money in a lawsuit and transferring your risk to the liable party.

Outcome of Case

ZERO loss payment, ZERO expense payment NO incurred claim dollars on the insured loss run for this accident.