

NBIS RISK MANAGEMENT CASE STUDY TOOL

Key Points

1. **Over \$850K in damages**
2. **Bare rental of crane**
3. **Favorable contract language**
4. **Tender accepted based on contract language**

Many companies make their money by renting out things to other people. Sometimes the rental is little, like a pressure washer to clean off your driveway. Sometimes it is big, like a condo at the beach for a week of vacation. Whatever the situation, an element of that rental transaction is the rental agreement. In our industry, we see rentals of large cranes that are heavy and complicated and very expensive. It is imperative that the rental agreements are carefully constructed and that they delineate who is responsible for what. A well-written contract is worth its weight in gold, as we will see in this case study.

The Parties:

ABC Construction, a steel erection company based in Arizona, was hired to perform steel framing work at a hospital project in Colorado and needed a crane to perform certain aspects of the work. In February 2009, ABC entered into a bare-rental lease agreement with XYZ Structures to rent a 1996 Manitowoc 888 Crane and Luffer attachment (“the crane”). They would need the crane for approximately three months to complete their work.

Facts and Damages:

On March 31, 2009, an ABC employee was operating the subject crane and was using the crane to set a vertical I-beam in place at the construction project. The iron workers were having a hard time getting the I-beam plumb, so in an effort to get the I-beam plumb, the ABC crane operator used the crane to apply a lateral force on the beam that subsequently, side loaded the luffing jib and caused the luffing jib to collapse. The crane collapsed and caused serious damage to the crane and the luffing jib.

Damages to the crane were appraised at \$559,692.00 and the damages to the luffing jib were appraised at \$291,630.00. Total damages were \$851,322.00. This figure does not include recovery, inspection or re-certification expenses, which may have taken the claim as high as \$1,000,000.00, which is what the suggested reserves were for this claim.

Inland Marine Risk Transfer Case Study

The Lease Agreement:

ABC entered into a rental agreement with XYZ on February 16, 2009 for the bare rental of a 1996 Manitowoc 888 Crane and Luffer attachment. The rental was for work that ABC would perform at a hospital project in Colorado. The anticipated dates of the rental were March 3, 2009 to June 3, 2009. The agreement required, among other things, that ABC indemnify and hold XYZ harmless for any damages or injuries that arose from ABC’s use of the crane. ABC was also required to purchase inland marine, commercial general liability and umbrella/excess insurance subsequent to, and for the duration of, the agreement and the work.

To their end, ABC provided XYZ with certificates of insurance wherein Insurance Company A was identified as their inland marine insurance carrier.

Contract Language:

The rental agreement was clear in its requirement that ABC (lessee) indemnifies and holds harmless XYZ (lessor) for any general liability and inland marine claims that arose from ABC’s work with the crane. Part of the key language in the rental agreement is as follows:

...Lessee agrees to partially indemnify and save Lessor, its employees and agents harmless from claims for death or injury to persons, including Lessor’s employees, of loss, damage or injury to property, including the equipment, arising in any manner out of Lessee’s operations. Lessee’s duty to partially indemnify thereunder shall include costs or expenses arising out of claims specified herein, including all court and/or arbitration costs, filing fees, attorney’s fees and costs... The Lessee’s obligations hereunder shall further not be limited by the amount of its liability insurance...

Furthermore, the rental agreement also specified that “...All risks of loss or damage to the Equipment, accidental or otherwise, shall be borne by the Lessee...” This element is the crux of our risk transfer for this particular claim, and it was indeed part of

the rental agreement language quoted in our risk transfer, aka tender, letter to ABC.

Risk Transfer:

Upon receipt of this claim, NBIS immediately sent ABC a tender letter demanding them to step in and handle the first party damages for the insured’s crane. After no response, and having since then received the rental agreement and certificate of insurance, a second tender was sent out to ABC and their insurance carriers: Insurance Company B for General Liability and Insurance Company A for Inland Marine. The second letter laid out every contractual basis and obligation ABC had to pick up this claim. No response to the second letter required that a third letter go out shortly thereafter, approximately two weeks.

Risk Transfer Successful:

Before a fourth tender letter could be issued, NBIS received an e-mail from Insurance Company A inquiring whether or not NBIS/NIIC had paid for any of the repairs yet. If not, they were going to go ahead and issue payment to WHECO, a crane repair facility, so that they could purchase a used luffing jib. A phone call to Insurance Company A and a follow up e-mail confirmed that Insurance Company A had indeed picked up the handling of this claim for XYZ.

Conclusion:

Because of the contract, the risk transfer/tender letter and the acceptance of that tender, XYZ did not incur their deductible, the carrier did not have to reserve \$1,000,000.00 or pay that amount in damages, and NBIS was relieved of having to pay almost \$125,000.00 as their reinsurance share of the loss.

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Improved Contract Language, Resulted in \$850K Savings Inland Marine Risk Transfer Case Study

Risk Management Lessons Learned:

1. Solid, well-worded contracts are essential for risk transfer to be successful. Whether the contracts are written by the insured's independent counsel, their carrier's risk management team, or they are just a boiler plate contract from a book, a good contract can make or break the risk transfer potential on a claim.
 3. Diligent follow ups and re-tenders are crucial to keep the matter hot and fresh on the desk of the recipient. Follow up the letter with a formal tender once you have the rental agreement in hand.
2. Succinct and detailed tender letters with the appropriate attachments (contracts, certificates of insurance, etc.) will force the recipient to take notice. If you are tendering a matter to another contractor or insurance carrier based on contract language, focus your letter on only those issues that will support your case.
 4. By having the correct and preferred NBIS contract language, as well as a prompt claim investigation, the adjusted amount of \$850,000 on this claim was never paid as a 1st party claim on the Inland Marine policy but was instead picked up by another insurance carrier due to proper contract language and the effective use of contract management practices.

