

# Becoming less risky

Bill Smith addresses four simple ways to become a better risk.

**W**hen it comes to controlling how much your insurance policy costs year over year, there are some things you can control and some things you can't. Market trends, nuclear verdicts, investment returns – they're all factors that every insurance buyer is subject to; therefore, there isn't much you can do to change their impact. However, it's not all out of your control. There are always at least four areas where you can make small changes that can have a big impact on your business – and make you a better risk.

## 1. Contracts

Every business in the construction industry can succeed or fail based almost solely on its contract. 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 jobsite. At NBIS, we believe a good contract or job ticket should contain the following key provisions.

### INDEMNIFICATION OR PARTIAL

**INDEMNIFICATION:** Indemnity is a promise – a promise to pay for possible damage, loss or injury. Insisting that the language reads in such a way that your company only has to respond to losses that result from your own negligent operation is one way to ensure you've got a fighting chance in court.

**INSURANCE:** 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."

**OPERATION OF EQUIPMENT PROVISION:** This is very important because it provides a strong "borrowed servant" argument for the actions taken by your operator. In a successful borrowed servant situation, you increase your chance of being protected from any action brought against you by your customer's employee, should they be hurt. Additionally, incorporating certain industry safety standards ties the parties in your agreement to the stipulations and responsibilities required under the ANSI-approved standards.

**GROUND CONDITIONS:** One of the responsibilities assigned in this provision is that for ground conditions and ground stability. Oftentimes, your operator will not be knowledgeable about the ground conditions where the crane will be operating, especially if this is the first day on a jobsite. In construction, OSHA requires the Controlling Entity to be responsible for assuring the ground conditions are adequate. Having certain language in your contract/job ticket also helps put your company in a better position to defend against unknown hazards.

**POWER LINES:** Our recommended provision states that it is the responsibility of the customer/lessee of the equipment to keep the crane away from power line hazards, and to get the power lines de-energized if the crane will be working around them.

## 2. Preventative risk management and training

One of the most important things to remember when it comes to risk management and training is that efforts need to be ongoing. 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?

- Crane operators – How recent are: certifications, training, new technology (LMI)
- Risk manager – Is she focusing on: safety plans, safety meetings, accident/injury prevention checklists, inspection and maintenance records, and technology?

Also, when planning routes for each job – whether hauling a trailer or a mobile crane – you should ask: Will there be an inspection along the way? Is there a CVSA check point? Do I cross state lines where a permit change will force my equipment to find suitable parking for an oversized load?

Many of the most common citations can also be avoided when drivers are properly trained and understand the current rules and regulations – which is exactly why NBIS developed the proactive Online Driver Training Program. The curriculum for this unique program was developed after understanding the most notorious transportation accident-causation factors. Each course takes around 15 minutes to complete and concludes with a test. And best of all, the program is defensible in court in any situation where a claim arises.

## 3. Claims response

Understanding how you're going to respond to an insurance claim scenario before that scenario occurs is a practice that is sure to pay dividends when the unexpected occurs. To help ensure a successful start to your claims investigation, NBIS has developed four levels of accident investigation for first responders – something every policyholder should keep at the forefront of his or her mind when a loss or claim occurs:

- LEVEL 1:** First response – implemented by policyholder.
- LEVEL 2:** Tactical response – implemented by specialized claims investigator (insurance company specialist or other designated specialist).
- LEVEL 3:** Forensic response – implemented by qualified expert witness.



### THE AUTHOR

**Bill Smith** is executive vice president of claims and risk management for NBIS.

“ 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 jobsite. ”

**LEVEL 4:** Legal response – implemented by defense or oversight attorney.

If the claims event is severe enough, each level of accident investigation will be implemented in one seamless response. In other occasions, these steps may develop systematically. In almost every scenario, though, it’s important to remember that it’s typically the insured policyholder who is the first responder.

Being the first responder to a claims event carries with it a great deal of responsibility. It’s important for policyholders 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.

#### 4. New technology and services

Over the years, we have seen a number of advancements in technology, from computers in cranes (LMIs) to data recorders (black box) in vehicles. The information contained in these devices is ever evolving – and also discoverable. Recently, NBIS has developed several relationships with companies that offer cameras outside the cab and down the truck to record incidents and help determine liability (passive management). Additionally, we have a program that takes the data in the recorder and uses it to understand driver behavior so you

can coach your drivers to avoid bad driving habits leading up to an accident (preventive management). We also partner with a product that alerts the driver if they drift the lane or follow too close to the vehicle in front (preventive management).

In conclusion, while many of the factors that go into pricing an insurance policy are indeed outside the realm of control of the policyholder, making sure your contracts, risk management and training initiatives, available technology that aids you in managing risk and claims response plans are in order are four areas where you can make immediate improvements, and help ensure you enjoy favorable pricing.

For assistance with any of the items discussed, or to see how NBIS can help you with any other risk management initiatives, contact us today. ■