

Innovative Contracts Reduce Claim Costs

Recent upgrades deliver improved results.

More than 20 years ago, we introduced the SC&RA to the concept of modifying crane rental agreements in order to improve insurance-claim outcomes in the crane industry.

At that time, our industry mainly used a standardized equipment rental contract that had been created in 1943 and not updated for more than half a century. Not only was the contract antiquated, it also referenced outdated ANSI standards.

So when we introduced our new Contract Risk Management system in the late 1990s, many crane industry leaders were excited about the concept and understood the premise that in order to be in a position to give them a fighting chance to minimize the excessive cost of claims and litigation, they had to change how they contracted their work.

Although the concept was excellent, the process was slow and took extensive training to learn how to navigate contract changes. Those two challenges, coupled

with the manual process and human tendency to stick with the familiar, led many members of the crane industry to keep using their existing antiquated methods.

In response, we worked with the SC&RA to develop a Risk Education Platform to garner broad industry support and educate crane owners on how changing the way they contracted their work could protect them more effectively from excessive litigation to reduce their claim costs.

The education platform was based on progressive legal and claims concepts developed by attorney Robert C. Moore, who was then our national coordinating claims counsel.

In hindsight, introduction of this unique program was a pivotal point for risk management throughout the entire crane industry.

To support the new system, attorney Moore developed an extensive legal compendium of state insurance and indemnification rules of law for each



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of the 50 U.S. states. The compendium included updated ANSI standards and was a vital reference for crane-industry contract risk-management techniques.

Since the process originated in the mid to late 1990s, before computerization became common, it was a manual process, housed in multiple three-ring binders and considered state-of-the-art legal reference material at that time.

This new system was highly effective in leading to a broad industry transformation from the old way of doing business that had included using 50-year-old contracts referencing outdated regulatory standards.

For the next 20 years, or so, contract risk-management techniques stayed pretty much the same, with no major upgrades.

Fast Forward to 2018

Today, the widespread use of automation with digital document capabilities allows crane owners to modify equipment-rental agreements easily just by clicking a button.

As important, the vital compendium of legal language is now kept on a user-friendly online database. It features the most up-to-date legal language and includes consistent updates to individual state indemnification rules and case law references.



In addition to these technological advancements, several contract risk-management upgrades further reduce crane company owners' exposure to excessive claim costs.

Some of the most recent upgrades include new contract conditions for:

1. Incorporation by Reference
2. Limitation of Liability
3. Change in Site Conditions
4. Lift Planning / Lift Director Responsibilities
5. Dispute Resolution
6. Non-Delegable Duties
7. Operation and use of Equipment
8. Rigging Responsibilities
9. State of Venue Adjustments
10. Equipment Maintenance Requirements

Upgraded Contracts Can Affect Common Claim Scenarios

When a crane company works in states other than the one where it is headquartered, the rules of law related to indemnification and insurance

requirements change. This "other state condition" can create exposure for crane companies due to state-specific contract language requirements. Crane owners can protect their interests by upgrading their contract terms to include "Incorporation by Reference" language that connects to updated, state-specific contract terms housed on a progressive website platform.

According to Moore, "Today's technological advancements allow crane owners to protect their interests by utilizing user-friendly website platforms in accordance with proven case law. This progressive technique has been used successfully by the American Institute of Architects (AIA) for several years."

Another newly updated technique that strengthens your ability to protect your company's interests is using a "Limitation of Liability" clause in your equipment-rental agreements. This technique has also been proven effective by AIA over the past several years. According to attorney Moore, "Limitation of liability may represent

the most meaningful adjustment in risk management protection for crane owners in many years. This clause is fair and has also been proven effective by AIA over the past 20 years. It will dramatically reduce crane owners' claim and litigation costs."

This clause will be especially useful when a crane accident involves significant consequential damages, such as when a load dropped during construction causes a plant shutdown that leads to financial loss claims based on business interruption.

Another newly upgraded technique that will greatly protect crane owners involves the current hot topic of "Lift Planning and Lift Director Responsibilities."

Moore says, "There is a significant amount of crane industry attention and regulatory development currently occurring around lift planning and lift director duties and responsibilities. Accordingly, we have developed specific contract risk management techniques for this important issue to

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further protect crane owner interests.”

Proper contractual determination of lift director responsibilities helps protect your interests in claims where faulty ground conditions, improper rigging, or inaccurate load weight contribute to incidents in your lifting operations.

“Dispute Resolution” is another key upgrade in contract risk management for crane owners. This critical contract feature will help significantly in controlling the broken old-school litigation system.

Under the old process, your insurance company’s defense lawyer takes control of the case and systematically keeps the file open with extensive depositions. Before you know it, the costs have escalated and your loss history has taken a significant hit.

According to Moore, “Dispute resolution forces the parties to sit down and resolve the issues up front so a unified defense can be brought on behalf of all parties, thereby reducing costs and giving a viable alternative to the broken old-school system of multiple depositions and discovery.”

Crane operations carry the risk of many possible claims in which “other party responsibilities” can drive up claim and litigation costs for crane owners.

The examples mentioned above are the most common, and each one can be mitigated by upgrading your existing equipment-rental agreements.

Also, new techniques that add specific contract references in your bid proposals can strengthen acceptance of risk-management terms and further protect your crane company when claims occur.

History Repeats

When asked whether history repeats, General George S. Patton said, “Prepare for the unknown by studying how others have coped with the unforeseeable and the unpredictable in the past.”

Twenty years ago, our introduction of Contract Risk Management in crane operations was seen as a progressive step forward for the industry.

Since then, we’ve encountered many unknowns and many unforeseeable circumstances in our Contract Risk Management efforts with crane owners. Those surprises included a few unpredictable organizational changes.

Today, history is, in essence, repeating itself as Robert Moore of Moore & Schulz, LLC and Redstone Heavy Iron once again form a strategic alliance to deliver innovative contract risk management solutions that help crane owners protect their interests.

If crane industry owners can consider taking innovative steps in contract risk management today, the way they did 20 years ago, history will repeat itself even further.

The core objective of upgrading contract risk management conditions will equate directly to crane owners seeing improved profits.

Business platforms and company names may change, but the fundamental principles of Innovative Contract Risk Management remain constant to reduce claim costs for crane owners. ■

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