



Insurance Business America Webinar
June 22nd – 2pm

Preventing & Handling Claims in the Construction Market



Speaker Introductions

William (Billy) Smith - Executive VP, Claims & Risk Management

bsmith@nbis.com



Bill Smith serves as Executive Vice President of NBIS Claims and Risk Management and joined the company in May 2006. He is a liaison with the Industry Associations that work with NBIS. His responsibilities include sales and marketing, claim and risk management, loss prevention, safety awareness, and accident investigation. His greatest accomplishments for NBIS include the development of a unique Risk Management Support System (RMSS) that separates NBIS from the rest of the insurance companies. With many years of construction experience coupled with safety, loss control, and litigation management, he and his team of experts have worked to put NBIS on the map as the recognized market leader in construction risk management. Bill has over 35 years of experience in the Crane, Rigging, and Construction industry. Previously he worked as Safety and Health Specialist with the Directorate of Construction, U.S. DOL-OSHA, where he guided and assisted all departments and field offices on crane and construction policies, procedures, and safe working practices. Bill is a recognized leader in the industry and has been published in Crane Works magazine and Lifting and Transportation magazine. He has also been acknowledged in the book, "Crane and Derricks."

Arthur (Art) Kirkner – VP of Claims

akirkner@nbis.com



Art servers as VP of Claims with responsibility to audit operations and process management for continuous improvement. Art has over 35 years' experience in Claims management with a reputation for optimization, productivity improvement and driving excellent customer service culture. Prior to joining NBIS, Art was the Chief Claims Officer of American Safety Insurance Company with previous experiences from companies such as, GAB Robins, Insurance Corporation of British Colombia and Hertz Corporation. Art completed his undergraduate studies at Temple University in Philadelphia, PA with a B.A. in Sociology. He is an active member of the following associations since 1998: AIA, IELA and DRI.



NationsBuilders Insurance Services

Our Business

Our Focus

Our focus is Heavy Construction Equipment and the related Specialty Transport Operators. Our distribution is exclusively administered with independent producers to build loyalty with the insured by making obvious the differentiated value NBIS provides.

Industry Dedication

NBIS has strategically partnered with some of the most notable industry associations, allowing us to stay up to date on the latest industry activity as well as government and regulatory changes, as a result we are able to provide our policy holders with the most comprehensive Insurance and Risk Management coverage. Associations include:

American Concrete Pumping Association (ACPA) - ACPA promotes concrete pumping as the choice method of placing concrete. The ACPA boast the only industry-recognized certification program for safety testing concrete pumping operators.

Specialized Carriers & Rigging Association (SC&RA) - SC&RA is an international trade association of nearly 1,300 member companies from 43 nations. Members are involved in specialized transportation, machinery moving and erecting, industrial maintenance, millwright, crane and rigging operations, manufacturing and rental. NBIS is the exclusive endorsed insurance provider of the SC&RA, this partnership allows us the opportunity to provide a comprehensive insurance program customized for the specific needs of the SC&RA Members.

Coverage Features

Commercial Auto Liability, also Competitive Auto Physical Damage Coverage

- Business Auto Coverage Form
- Truckers Endorsement Available
- Blanket Additional Insured Form
- Blanket WOS Endorsement Available
- Broadened Pollution Liability for Covered Autos
- MCS 90 Motor Carrier Endorsement
- Uninsured/Underinsured Motorist Coverage Available
- Hired Car Physical Damage Coverage
- Hired and Non-Owned Auto Coverage

General Liability

GL Coverage Form Includes:

- Over-the-road coverage for mobile equipment
- Motor Vehicle Laws Endorsement Included
- Additional Insured Ongoing operations 07/04
- Additional Insured with Completed Operations 07/04
- Deductible Endorsement Available 2009 6/04
- Potential for up to 50% of deductible payment waived
- Primary & Noncontributory

Inland Marine

- All Risk of Direct Physical Loss on Manuscript Form
- Tailor Made Policies for Specific Coverage Needs
- Contractor's Equipment
- Motor Truck Cargo
- Real and Personal Property Coverages
- Flood and Earth Movement
- Auto Physical Damage
- Warehouse Legal Liability

Workers' Compensation

Workers' Compensation and Employers' Liability

Coverages

- General Liability
- Property/Inland Marine
- Commercial Auto
- Excess/Umbrella
- Workers' Compensation

Advantages

- Risk Management Differentiation
- Highly Competitive Rates
- Open Agency System
- Composite Refund based on Revenues

Class of Business

- Concrete Pumping

NBIS is a comprehensive insurance and risk management provider for the Specialized Transportation, Crane and Rigging, Concrete Pumping and Equipment Dealer/Rental Industries.

For program information call 1.866.668.NBIS or visit www.NBIS.com.



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The Risk Management Cycle



Risk Management– Proactive & Reactive

Your clients “in-practice” Risk Management plan determines how ready they, the insurance carrier and ultimately you as the agent are to handle claims when they happen, not “if”...

Often times the Risk Management plan is supplied to the insurance carrier as a document for review as part of the submission.

Then what? Is the plan:

- Proactive?
 - Safety is a culture not a process nor a priority
 - All employees are empowered to take action when something doesn't feel right, well before something goes wrong
- Reactive?
 - Safety is “that guy's job, not mine” attitude
 - Employees respond to accidents and support the claim process as a “have to”



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Billy Smith

HOW TO REVIEW A RISK MANAGEMENT PLAN

Evaluate the Risk Management Plan

After decades of writing heavy construction equipment, NBIS has seen it's fair share of safety plans, risk management plans and accident response protocols.

As you review your clients Risk Management Plans and hopefully the Terms used on their Contracts/Work Tickets, keep the following in mind:

- Indemnity
- Required minimum primary & Excess limits including AI
- Workers' Comp waiver
- 'Borrowed Servant' or 'Loaned Employee'

Remember, **Safety is a Culture** not a process or a plan



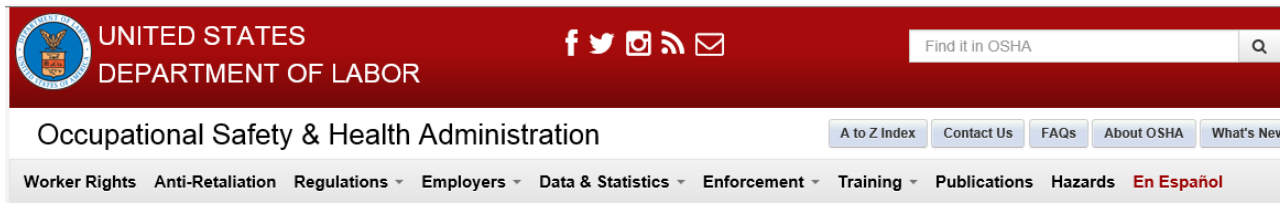
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Observations - What to look for

- Housekeeping (yard, equipment, shop, recordkeeping)
- Security (Fence, lights, cameras)
- Culture (Top down, safety equipment worn)
- Agency data on company (OSHA, CSA)
- Recordkeeping
- Labor management committee or management driven
- How long in business
- Family owned (generations) or equity owned

OSHA SEARCH

WWW.OSHA.GOV

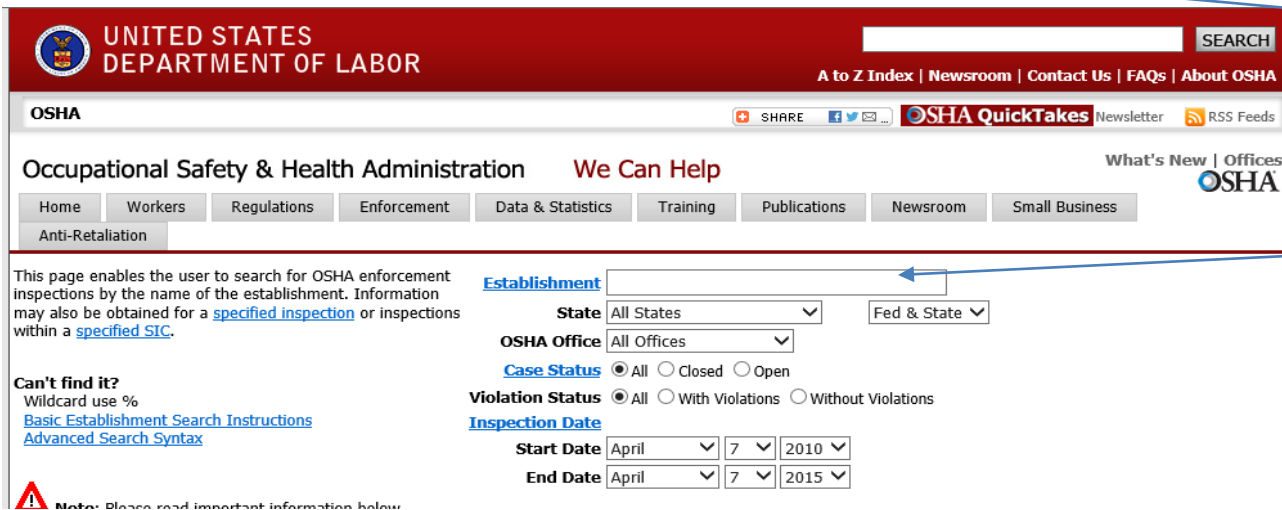


UNITED STATES DEPARTMENT OF LABOR

Find it in OSHA

Occupational Safety & Health Administration

Worker Rights Anti-Retaliation Regulations Employers Data & Statistics Enforcement Training Publications Hazards En Español



UNITED STATES DEPARTMENT OF LABOR

SEARCH

A to Z Index | Newsroom | Contact Us | FAQs | About OSHA

OSHA

SHARE OSHA QuickTakes Newsletter RSS Feeds

Occupational Safety & Health Administration We Can Help

Home Workers Regulations Enforcement Data & Statistics Training Publications Newsroom Small Business

Anti-Retaliation

This page enables the user to search for OSHA enforcement inspections by the name of the establishment. Information may also be obtained for a [specified inspection](#) or inspections within a [specified SIC](#).

Can't find it?
Wildcard use %
[Basic Establishment Search Instructions](#)
[Advanced Search Syntax](#)

Establishment

State All States Fed & State

OSHA Office All Offices

Case Status ☒ All ☐ Closed ☐ Open

Violation Status ☒ All ☐ With Violations ☐ Without Violations

Inspection Date

Start Date April 7 2010

End Date April 7 2015

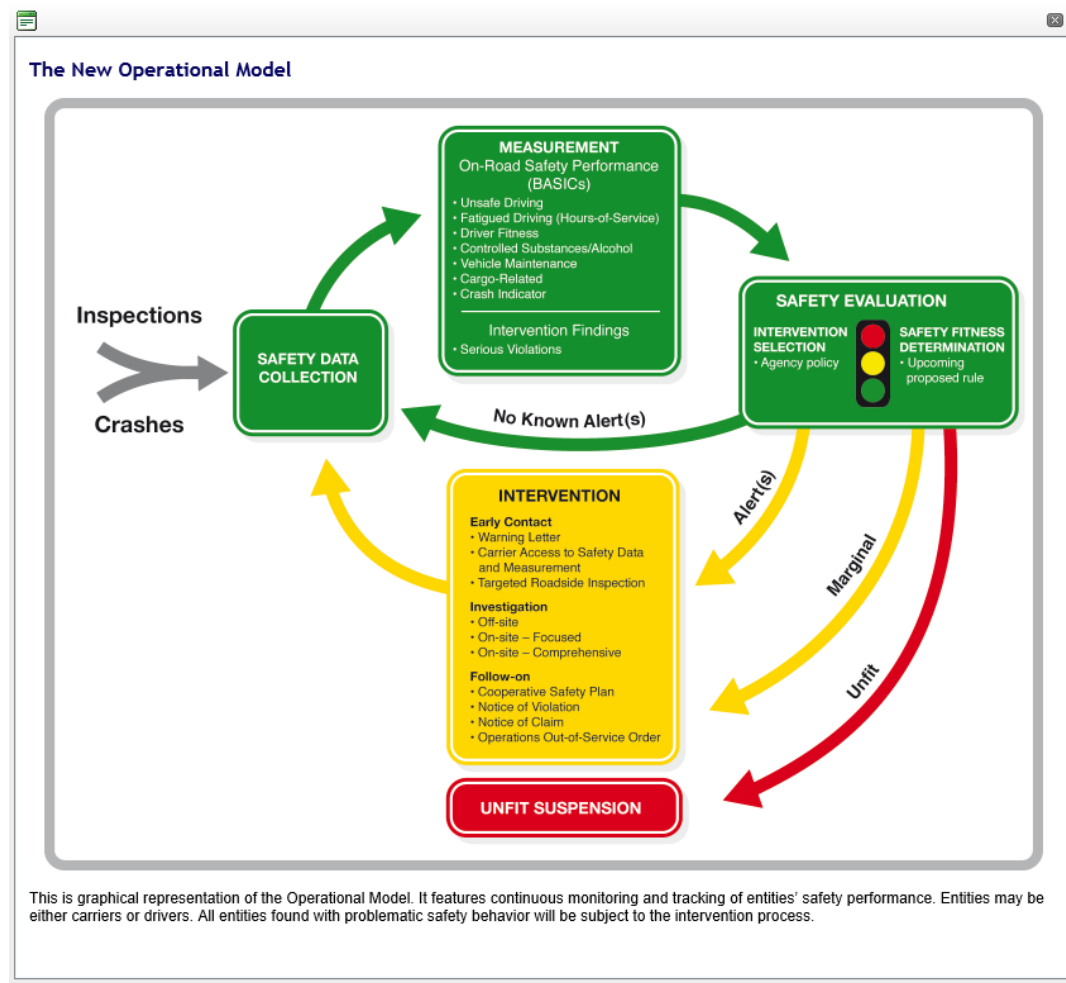
Look for No more than 2 Serious Citations in last 3 years



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Compliance Safety Accountability - CSA

<http://csa.fmcsa.dot.gov/default.aspx>



CSA

<https://ai.fmcsa.dot.gov/SMS/Default.aspx>

The screenshot displays the FMCSA SMS website interface. The header includes the FMCSA logo and the text "Federal Motor Carrier Safety Administration". A search bar is located in the top right corner. Below the header, there is a navigation menu with links for A&I, CSA, SMS, ADVANCED SEARCH, TOOLS, and HELP CENTER. A search bar for motor carriers is also present. The main content area is divided into several sections: "SAMPLE ENTERPRISES" with a list of companies, "Safety Rating & OOS Rates" with a table of data, "Licensing and Insurance" with a table of data, and "BASIC Status" with a public view link. A sidebar on the left contains links for "COMPLETE SMS PROFILE", "CONTACT US", "DOWNLOADS", and "PRINT".

FMCSA
Federal Motor Carrier Safety Administration

LOGIN |

CSA
Compliance • Safety • Accountability

SMS Safety Measurement System

A&I CSA SMS ADVANCED SEARCH TOOLS HELP CENTER

Search Motor Carriers: Type Name, U.S. DOT#, I

Get Road Smart.

SMS Safety Measurement System

A&I CSA SMS OVERVIEW ADVANCED SEARCH TOOLS HELP CENTER

Search Motor Carriers: Type Name, U.S. DOT#, I

COMPLETE SMS PROFILE

CONTACT US

DOWNLOADS

PRINT

SAMPLE ENTERPRISES

INC

DBA: MACHINERY MOVERS

U.S. DOT#

Address: OCEANSIDE, NY 11572

Number of Vehicles: 37

Number of Drivers: 37

Number of Inspections: 64

Safety Rating & OOS Rates
(As of 04/06/2015 updated daily from [SAFER](#))

CONDITIONAL
(Rating Date: 07/04/2007)

Out of Service Rates

Type	OOS %	National Avg %
Vehicle	28.1	20.7
Driver	3.1	5.5
Hazmat	0.0	4.5

Licensing and Insurance
(As of 04/06/2015 updated hourly from [L&I](#))

Active For-Hire Authority

Type	Yes/No	MC#/MX#
Property	Yes	
Passenger	No	
Household Goods	No	
Broker	No	

BASIC Status (Public View)
Behavior Analysis & Safety Improvement Categories (BASICS)

[How does SMS relate to crashes?](#)

Based on a 24-month record ending March 27, 2015

CSA – Company Profile

UNSAFE DRIVING

Not Public
CRASH INDICATOR

HOURS-OF-SERVICE COMPLIANCE

VEHICLE MAINTENANCE

CONTROLLED SUBSTANCES AND ALCOHOL

Not Public
HAZARDOUS MATERIALS COMPLIANCE

DRIVER FITNESS

COMPLETE SMS PROFILE

CONTACT US

DOWNLOADS

PRINT

On-Road Performance

4.51 Measure	NOT PUBLIC	0.62 Measure	5.54 Measure	0 Measure	NOT PUBLIC	0.05 Measure
62% Percentile		33% Percentile	65% Percentile	0% Percentile		Less than 5 driver inspections with violations

Investigation Results

No Serious Violations Discovered	N/A	No Serious Violations Discovered	No Serious Violations Discovered	No Serious Violations Discovered	NOT PUBLIC	No Serious Violations Discovered
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Click to select a BASIC icon above to get details, or view your [Complete SMS Profile](#).

Denotes this carrier exceeds the FMCSA intervention [threshold](#) relative to its safety event grouping based upon roadside data and/or has been cited with one or more serious violations within the past 12 months during an investigation. Therefore, this carrier may be prioritized for an intervention action and roadside inspection.

VIOLATION SUMMARY

Violations: 72

Violations	Description	# Violations	# OOS Violations	Violation Severity Weight	BASIC
392.16	Failing to use seat belt while operating CMV	2	0	7	Unsafe Driving
392.2C	Failure to obey traffic control device	1	0	5	Unsafe Driving
392.2LV	Lane Restriction violation	3	0	3	Unsafe Driving
392.2-SLLS2	State/Local Laws - Speeding 6-10 miles per hour over the speed limit	2	0	4	Unsafe Driving
392.2-SLLS3	State/Local Laws - Speeding 11-14 miles per hour over the speed limit	5	0	7	Unsafe Driving
392.2-SLLS4	State/Local Laws - Speeding 15 or more miles per hour over the speed limit	1	0	10	Unsafe Driving
392.82A1	Using a hand-held mobile telephone while operating a CMV	1	0	10	Unsafe Driving
395.3A2-PROP	Driving beyond 14 hour duty period (Property carrying vehicle)	2	2	7	HOS Compliance
395.3(a)(3)(ii)	Driving beyond 8 hour limit since the end of the last off duty or sleeper period of at least 30 minutes	1	0	7	HOS Compliance
395.8	Driver's record of duty status (general/form and manner)	5	0	1	HOS Compliance
395.8(e)	False report of driver's record of duty status	2	0	7	HOS Compliance

OSHA Civil & Criminal Penalties

- **29 U.S.C.A. § 666**

- **(a) Willful or repeated violation** – Any employer who willfully or repeatedly violates the requirements of § 654 of this title...may be assessed a civil penalty of not more than \$70,000 for each violation, but not less than \$5,000 for each willful violation
- **(b) Citation for serious violation** – Any employer who has received a citation for a serious violation of the requirements of § 654 of this title...shall be assessed a civil penalty of up to \$7,000 for each such violation
- **(k) Determination of serious violation** – For purposes of this section, a serious violation shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation

OSHA Civil & Criminal Penalties

- **29 U.S.C.A. § 666**

- **(e) Willful violation causing death to employee**

- Any employer who willfully violates any standard, rule, or order promulgated pursuant to § 655 of this title, or of any regulations prescribed pursuant to this chapter, and that violation caused death to any employee, shall, upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than six months, or by both; except that if the conviction is for a violation committed after a first conviction of such person, punishment shall be by a fine of not more than \$20,000 or by imprisonment for not more than one year, or by both.

- A “willful violation” of Occupational Safety and Health (OSH) Act is one committed voluntarily, with either intentional disregard of, or plain indifference to, OSH Act requirements; “willful” means action taken knowingly by one subject to statutory provisions in disregard of action's legality (*Chao v. OSHA Review Com’n*, C.A.5 2005, 401 F.3d 355)

Mitigating Exposure

- Management & Supervisory knowledge of OSHA laws and requirements
- Employers should ensure that employees from the CEO on down receive appropriate training regarding safety rules and procedures
- Safety rules and procedures should be published, understood, enforced, and accepted by all.
(The company and you are protected by your decisions and actions every minute every day)
- Compliance with safety procedures must be monitored, recorded and documented in a system maintained by the company
- Companies should have a system available to employees to anonymously report unsafe work conditions
- Companies should involve the employees in designing training programs and ensure them that there is no retaliation against an employee who reports a safety breach in good faith

Mitigating Exposure

- Employers should develop an accident response plan that establishes a single contact person who is able to respond to requests for documents, materials, etc.
- Maintain a high visibility of safety personnel on the job site and have weekly meetings between all site safety personnel to keep lines of communication open
- Pre-employment drug testing plus drug testing after all accidents involving personnel or equipment
- Require a minimum number of hours of safety orientation covering general jobsite safety and rules when hired – follow up with weekly tool box talks
- Hire the best and have the right management culture



Art Kirkner

LINE OF COVERAGE

The Policy & It's Role in Risk Management

The Policy Coverage determines the claims outcome.

Think of it this way:


- If all primary policies are provided by the same market/carrier – the claims adjuster can better manage the claims in a broad sense from all lines
- Excess coverages exist to cover any shortfalls in the primary layer, be sure there is enough
- General Business Owners Policies don't specialize language for the instances your client is involved in, the right policy for the job is critical



NationsBuilders Insurance Services

The Policy & It's Role in Risk Management

The Policy Coverage determines claims outcomes. Here are a few claim scenarios to consider, line by line:



In the Crane and Rigging industry accidents occur when you least expect them, leaving in the wake damages that can cost millions of dollars.

Do you have enough to protect your business and cover the enormous cost of an accident?

At NBIS we want to make sure that in the event of a claim you are fully covered no matter the size . By adding Excess Coverage in addition to your General Liability policy you can rest assure that all expenses will be paid.

Excess Coverage from NBIS includes:

- Coverage following-forms primary and non-contributory wording on primary additional insured endorsements
- Options for following-forms riggers liability coverage
- Coverage following-forms over-the-road primary coverage for units such as boom trucks, mobile cranes, and concrete pump trucks

Don't get caught holding the bag! Give yourself piece of mind, contact your agent today or visit us at www.NBIS.com/Excess.

Same Claims Representative for all damages when you add NBIS' Excess Line to your General Liability Policy

Excess and General Liability Accident Example

	General Liability Only	General Liability Only	General Liability + Excess
Accident Scenario	Your equipment turns over on personal property. As a result claim is filed. Claim includes: <ul style="list-style-type: none">• Damage to 2 vehicle• 2 people injured	Your equipment turns over on public property. As a result claim is filed. Claim includes: <ul style="list-style-type: none">• Damage to 4 vehicle• 5 people injured• Damage to building• Damage to power line	Your equipment turns over on public property. As a result claim is filed. Claim includes: <ul style="list-style-type: none">• Damage to 4 vehicle• 5 people injured• Damage to building• Damage to power line
Cost Of Claim	\$950,000	\$3.5 Million	\$3.5 Million
With General Liability Coverage your Insurance Pays (GL - \$1 Million Max)	\$950,000	\$1 Million	\$1 Million
Excess***			2.5 Million
Result	Claim is settled at no cost to insured	Insured is responsible to pay the remaining \$2.5 million	Claim is settled at no cost to insured



NBISTM

NationsBuilders Insurance Services



Art Kirkner

CLAIMS MANAGEMENT

Claims – the NBIS Difference

NBIS Construction & Transportation Insurance Services provides industry specific claims service for our Clients. Loss events in the Construction and Transportation arena involve insurance contracts that represent a Complex -Sub-Specialty of Standard Commercial Lines insurance.

As a result of the structure of the work involved:

- Claims often involve complex risk shifting & coverage contribution often resulting in separate coverage litigation;
- Negligence claims & suits involve legal complexities due to potential for multi-defendant scenarios;
- OSHA enforcement and compliance can impact liability;
- Industry standard compliance can create an additional layer of liability
- Engineering factors can influence liability in terms both design and applied construction methods and techniques



NationsBuilders Insurance Services

The Risk Management Cycle



- Rapid Response & Early Recognition
- Using risk management tools to the fullest
- Timely & regular communications

What's the Risk?



Managing Risk After the Loss

The NBIS Way :

- “Early Alerts” unique to your clients and industry
 - Enables timely communication to Loss Control, Underwriting and broker as to potential exposure
- Risk transfer possibilities
 - NBIS preferred contract used?
 - Early tender & aggressive pursuit strategy
 - Presence of a “Master Services Agreement” & implications
 - Alerting Loss Control & Underwriting



Managing Risk After the Loss

The NBIS Way :

- NBIS Preferred Contract benefits insured loss results:
 - Indemnification consistent with law and statutes
 - “Additional Insured” & minimum limit requirements
 - “Borrowed servant” or “loaned employee” status
 - Workers Compensation subrogation waiver
- NBIS Preferred Contract effectiveness:
 - Past 18 months, NBIS clients involved in claims with settlements exceeding \$105M
 - NBIS clients paid \$0 in contribution
 - Spent \$1.1 M & recouped \$510K to date



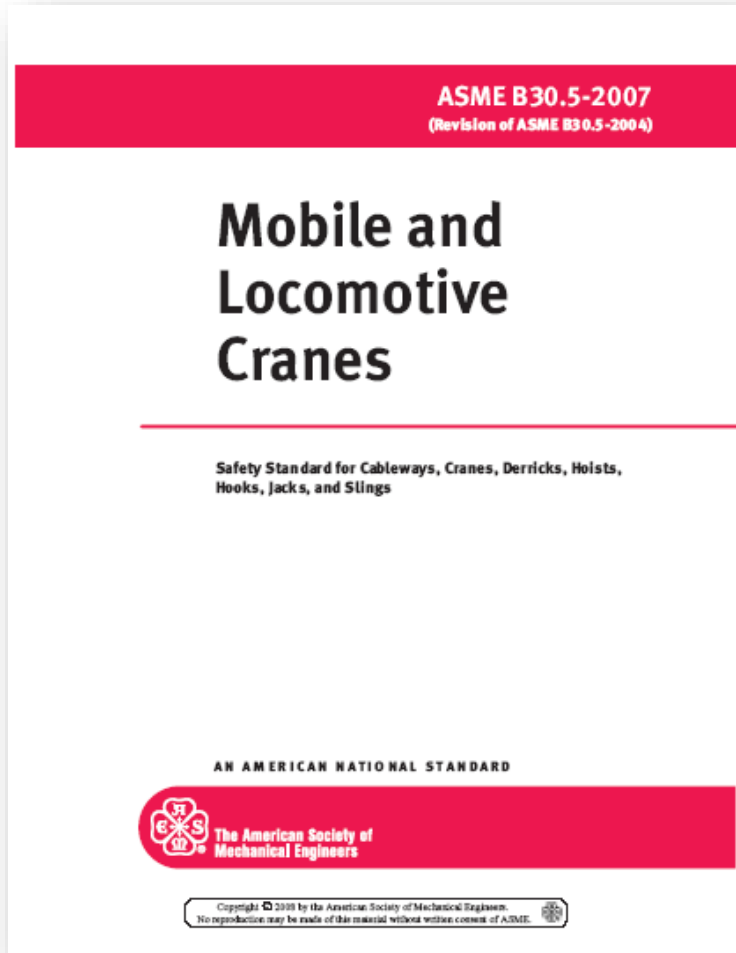
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Managing Risk After the Loss

The NBIS Way :

- Using NBIS risk management tools to the fullest:
- ANSI B-30 Industry Standards
 - NBIS senior executive active in co-developing & is an NCCCO commissioner
 - Defines industry standards governing crane operator, rigger, lift director & site supervisor
 - NBIS staff knowledgeable and aggressively uses
 - NBIS defense lawyers reference in legal pleadings to educate judges and plaintiff lawyers
 - NBIS clients dismissed from & did not contribute to \$767,000 in losses using B-30 Standards

ANSI Standards



- The ASME B30.5 standards available for purchase:
www.webstore.ansi.org
- Did you know? 85% of copies sold are to law firms

Managing Risk After the Loss

The NBIS Way :

- Timely & regular communications
 - Underwriting & Loss Control alerts
 - Claim reviews with active accounts
 - Periodic and educational



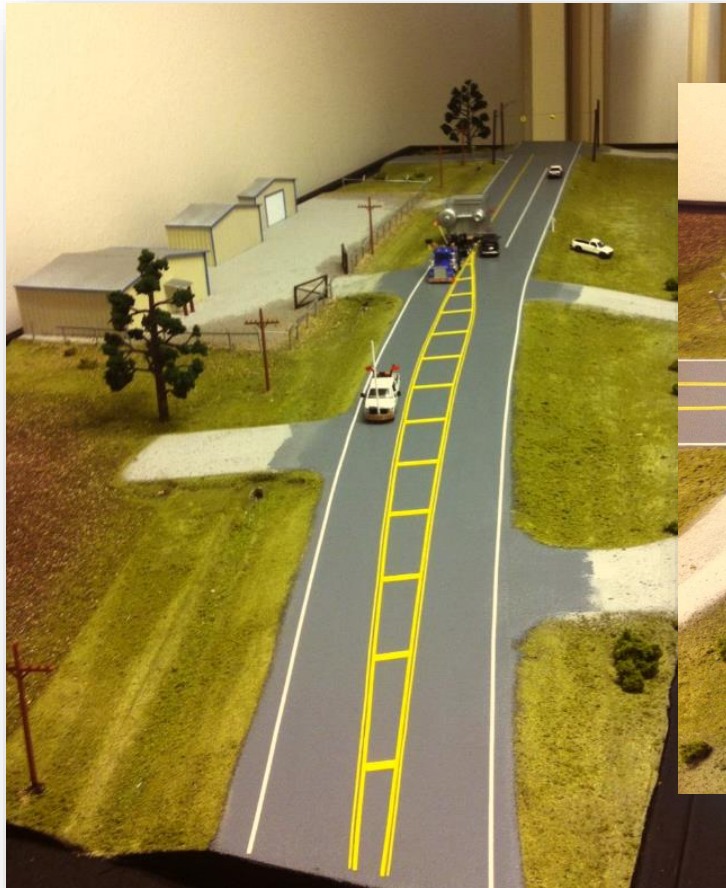
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Managing Risk After the Loss

The NBIS Way :

- Timely & regular communications
 - “Litigation team”
 - Early defense “team approach” to strategy
 - Managing the “sympathy” in non-liability claims
 - Team: examiner, expert, defense counsel and management

When the Worst Happens



Risk Management Support System

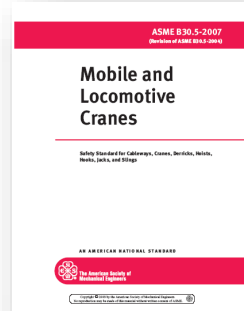
Risk Management System Designed to Create a Continuous Process



RMSS Kit



Contract Management



Industry Standards



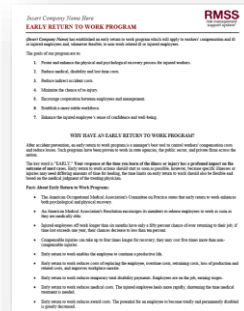
OSHA Regulations



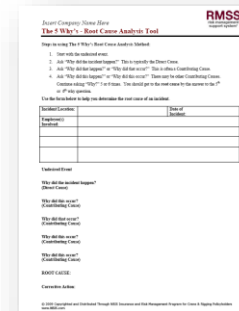
Safety Program



Tool Box Talks



Return To Work Policy



Root Cause Analysis



Claim Reporting

Contact Us

Questions?

Send us an email at:

bsmith@nbis.com

akirkner@nbis.com

Send your submission and appropriate
supplemental application to:

bsmith@nbis.com

submissions@nbis.com



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