



Insurance Coverage Risk Solutions

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.



Coverages and Risk Management Solutions

PROGRAMS

NBIS offers premier heavy industry insurance programs with multi-line coverage.

- Crane & Rigging
- Concrete Pumping
- Specialized Transportation
- Equipment Rental/Dealers

COVERAGES

Our specialized coverages address the unique exposures specific to your business.

- General Liability
- Property/Inland Marine
- Commercial Auto
- Excess/Umbrella
- Workers' Compensation
- Motor Truck Cargo
- Warehouse
- Rigger's Liability
(Crane & Rigging / Concrete Pumping only)
- Additional Coverages & Endorsements
(Specialized Transportation)

RISK SOLUTIONS

We don't just address risk. We manage it.

- Contract Management
- Online Safety & Health Training System
- Fleet Cost & Care Partnership
- Telematics Partnership
- Online Driver Training System
- Dash Camera/Falcon Eye Partnership
- Risk Management Support System

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

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

Contract Management

Effectively optimizing risk-transfer potential.

RMSS

risk management
support system®

The RMSS is a unique online platform where NBIS insureds can access a comprehensive suite of risk management resources. Enjoy 24/7, single sign-in access to risk management tools specific to the heavy construction industry.

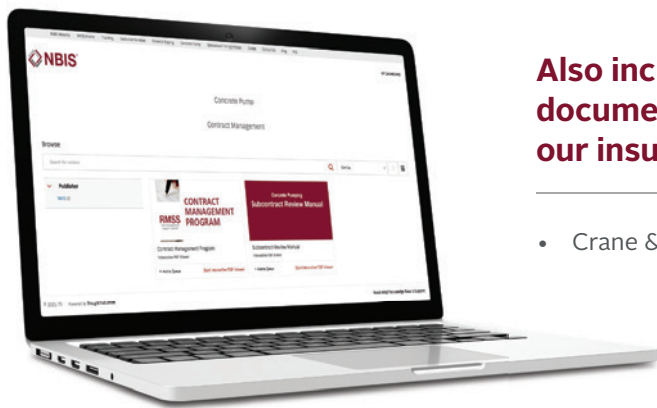
The RMSS includes access to a wide variety of NBIS Exclusive Service programs and partnerships:

- NBIS Safety & Health Program
- NBIS Driver Training Program
- Discounted Camera Program
- Driver Insights Program
- OSHA Litigation Support
- Manufacturer Training Content
- Industry Association Safety Content

» **FLEET COST & CARE** — Preferred pricing for NBIS insureds



— Preferred pricing on premium content



Also included in the RMSS Portal are contract management documents and case studies, unique to each market segment our insured companies operate in:

- Crane & Rigging
- Concrete Pump
- Specialized Transportation



Why Use the RMSS?

The RMSS is the power behind your NBIS policy. This complimentary toolkit allows you to take proactive steps towards managing risk more effectively, resulting in a more profitable business.

Get started today!



To activate your RMSS account, visit **NBIS.com** and click **RMSS** in the upper right corner.

www.nbis.com
RiskManagement@NBIS.com
877-860-RMSS (7677)

Powerful words

Protecting yourself through contract language can help you transfer risk to the liable party.

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?

"That's the way we've always done it."

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

Bill Smith speaks at the SC&RA Crane & Rigging Workshop.



avoided by doing something as easy as changing the language in their daily rental ticket.

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,

“ 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. **”**

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 AUTHOR

Bill Smith executive vice president, NBIS, is an expert on risk management and safe crane operations. He was a member of C-DAC, which assisted writing the

OSHA Crane & Derricks Standard.

NBIS Online Driver Training Program



Comprehensive online driver training

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

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

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



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).

NBIS Online Safety & Health Training

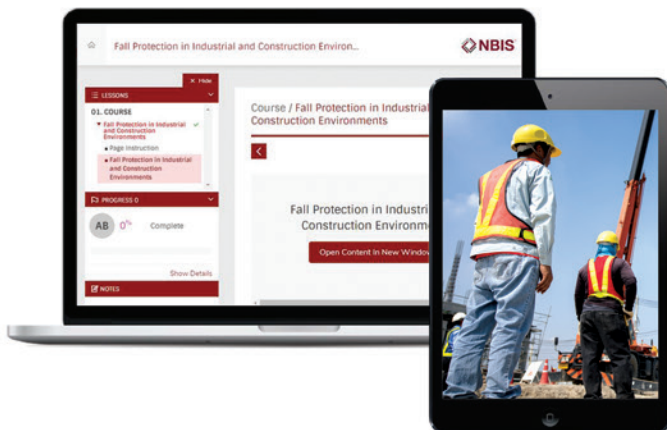


Culture-shaping safety training

A full suite of training resources—available anytime, anywhere.

As an NBIS policyholder, you and your employees can participate in a variety of courses—anytime, anywhere, using a unique login—designed to enhance the safety culture within your organization. Courses range in topic and are updated frequently. A selection of course topics includes:

- Crane Safety
- Rigging Safety
- Cargo Securement
- Roadside Inspections for CMV Drivers
- Fall Protection
- Trenching and Shoring
- Lockout / Tagout
- Silica Safety in Construction Environments
- Recent Changes to OSHA Regulations
- Defensive Driving
- Slips, Trips, and Falls in Construction



The right safety culture starts with the right training.

Having a safety program that you know and follow is good, but it isn't good enough. You also need the right safety culture. You need people who buy into the safety mindset. People well versed in OSHA regulations, workplace safety issues (like slips, trips, and falls and PPE) and rigging safety.

Convenient and Cost-Effective Access to Robust Training Options

Online safety training is a proven catalyst in promoting a true safety culture. It's an inexpensive way to offer your employees access to hundreds of 40-50-minute safety training titles with 24/7 accessibility from anywhere there's an Internet connection. Add in the detailed tracking and reporting capabilities and you'll find that nearly nothing else on the market today compares.

COMPREHENSIVE LIBRARY

Access to hundreds of various safety titles—from construction topics to general safety.

SELF-PACED TRAINING

Training can occur at literally anytime, day or night—whenever your schedule allows.

TRACKING, DOCUMENTING, REPORTING

Comprehensive tracking of training results and individual documentation of course completion to aid in protecting your company from negligence lawsuits.

For additional information or to enroll,
email RiskManagement@nbis.com or call **1.877.860.RMSS (7677)**.

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



The right agent can help you control the costs of risk now and in the future.

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

“ Heavy construction companies should look for an agent who understands the industry as an *industry*, and not simply from an insurance standpoint. ”

JEFF HAYNES, National Heavy Construction Practice Leader, USI

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.



THE AUTHOR

Bill Smith executive vice president, NBIS, is an expert on risk management and safe crane operations. He was a member of C-DAC, which assisted writing the

OSHA Crane & Derricks Standard.

NBIS FalconEye Camera Discount Program



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 WIFIDASH 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](https://www.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. ■

THE AUTHOR



Bill Smith executive vice president, NBIS, is an expert on risk management and safe crane operations. He was a member of C-DAC, which assisted writing the OSHA Crane & Derricks Standard.

A Proven Telematics Solution for NBIS policyholders



Maximize efficiency, reduce costs, and increase profits with telematics

NBIS Driver Insights 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).**

Legal Marijuana Use Is Growing

» YOUR DRUG POLICIES NEED TO BE TIGHTER THAN EVER

BY KYLE RASK

NBIS Concrete Pumping
Program Manager

AS OF THIS WRITING, 12 states have legalized recreational marijuana, and 22 more states have legalized marijuana for medicinal use. Legalization has arrived, and is only likely to grow more widespread in the near future.

Data shows that increasing numbers of employees are testing positive for marijuana use, both medicinally and recreationally. More federally regulated employees are testing positive, too. FMCSA's Drug and Alcohol Clearinghouse reported 40,500 positive tests between January and September 2020, 52% of which were for marijuana.

At the federal level, marijuana is still an illegal Schedule I Controlled Substance. The Department of Transportation (DOT) prohibits medical marijuana use by employees in safety-sensitive positions subject to federal testing guidelines. For workers who hold a Commercial Driver's License (CDL), the Federal Motor Carrier Safety Administration (FMCSA) makes it explicitly clear that there is no scenario in which marijuana use—medical or otherwise—is allowable.

If your state has legalized recreational or medical marijuana, the drug is readily available to your employees. Your staff might be more likely to push back against your drug policy, or take the federal regulations less seriously, when state and federal laws conflict. This could increase your company's risk of facing fines, violations, and other negative impacts on your daily operations.

TESTING AND MONITORING

A lot of companies in states that have legalized marijuana are becoming lax about testing employees for marijuana. Following federal regulations means that you're required to regularly screen all employees with a CDL—which likely includes a large portion of your staff. Make it your company policy to always test all employees according to FMCSA guidelines. Additionally, it's a good idea to supplement testing with monitoring. Keep your middle management up-to-date with drug and alcohol Reasonable Suspicion Training.

Consult with an attorney about non-regulated employees carrying medicinal marijuana cards. Currently, no state requires employers to allow medical marijuana use while on the job. However, if a non-regulated employee tests positive for marijuana use and holds a medical marijuana card, the wrong disciplinary action could open you up to Equal Employment Opportunity Commission claims.

A well-built, fully developed, and consistently implemented drug use policy can do wonders to protect your company against the pitfalls of the always-changing local, state, and federal marijuana legislation. Stay consistent, firm, and fully aware of what you can do to keep your daily operations safe and to make your safety culture thrive.

A well-built, fully developed, and consistently implemented drug use policy can do wonders to protect your company against the pitfalls of the always-changing local, state, and federal marijuana legislation.



ABOUT THE AUTHOR

Kyle Rask is the Program Manager for Concrete Pumping at NBIS with over 18 years of experience in Concrete Pumping operations, safety/regulatory management, leadership and product development. Kyle is an active member of the American Concrete Pumping Association (ACPA), and serves on several committees and is also a current ASME B30.27 Subcommittee member.

PREPARATION IS THE BEST DEFENSE. LET NBIS HELP.
REACH OUT TODAY AT **NBIS.COM** OR BY CALLING **(877) 860 - RMSS (7677)**.

**COVERAGES: GENERAL LIABILITY | PROPERTY/INLAND MARINE
COMMERCIAL AUTO | EXCESS/UMBRELLA | PHYSICAL DAMAGE
CUSTOM CARGO/TRANSIT | WORKERS' COMPENSATION**

Maximize Safety and Efficiency with Digital Document Management

Simplify fleet management and manage operational risk with Fleet Cost & Care's industry-leading software.

Streamline Signature and Document Management

- Generate PDF documents (such as quotes and rental agreements) and email for signing directly from DocuSign. Capture electronic signatures from a smartphone or tablet at the beginning and end of a job.
- Use Terms & Conditions templates to make it easier to manage the various types of forms you need for different companies, yards, etc.

E-TICKETS ARE:

- Accessible anywhere with Offline Mode
- Automatically emailed to customer once signatures are obtained
- Attachment-friendly for sending lift plans, permits, and more.

Help Ensure Compliance with Ease

- Easily require employees to complete and attach essential items like pre-job inspections and site safety checklists before starting work.
- Configure certification requirements to ensure that only employees with the correct credentials are assigned to specific tasks—system will alert you to potential conflicts.

Stay On Top of Data and Extend Equipment Life

- Be alerted to coming due and past due certifications
- Stay current with your engine hour, odometer meter, preventive maintenance activities, and inspection schedules.
- 360-degree view of down time history, maintenance and repairs, warranty info, and equipment deficiencies helps you
- ELD and GPS integration enables HOS importing from ELD systems so dispatchers stay compliant when scheduling employees.



The screenshot shows a mobile application interface for an "Operator Ticket". At the top, there are tabs for "Time", "Checklist", and "Hours & Miles". Below the tabs, there are sections for "Stop Time", "Check List", and "Signer's Name" (John Smith). A date field shows "1/4/21 9:33 AM". There is a signature field with a handwritten signature "John Smith". Below this, there is a section for "Authorized Signature" with a signature field and a date field. The form also includes time tracking fields: "Time Left Yard" (8:00 AM), "Time Left Job" (2:00 PM), "Time Arrived Job" (9:29 AM), and "Time Arrived Yard" (3:30 PM). There is a checkbox for "Have Signed At End Of Day" and a checkbox for "Use and Through Lunch". At the bottom, there is a section for "Sig ver's Name" (John Smith) and a date field (1/4/21 9:33 AM). A small disclaimer at the bottom states: "The above times are verified to be correct. This is not a time ticket. There have been 1 accidents involving any of the equipment."

NBIS and FCC help you leverage technology so that you can rest easy knowing you're compliant and covered—and focus on getting the job done.

OSHA Litigation Support



Expert OSHA-specific legal representation

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).

Only You Can Protect Your Company

Despite legislative progress, nuclear verdicts remain a present threat. The good news? You can defend your company before a single claim is filed.

BY ART KIRKNER

VP of Claims, NBIS

AS MOST OF US KNOW, the battle to protect trucking companies from unfair legal targeting and vilification is ongoing. The Texas legislature recently passed HB19, which went into law effective September 1, 2021. HB19 permits a defendant trucking company to request a two-phase trial. The first phase would serve to determine liability as to the involved parties and the amount of compensatory damages. The second phase would be used to determine any negligence on the part of the trucking company and award exemplary damages against the company based upon negligent entrustment, negligent hiring of a driver with a poor driving history, or failure to train and so forth. Exemplary damages are usually capped, depending upon the state, and require a unanimous jury decision based upon clear and convincing evidence. We view the passing of this bill by the Texas legislature as a cautious but hopeful improvement for the industry.

However, while legislative advancements like HB19 offer a potential window into a changed legal landscape, high-profile cases continue to indicate that the work is far from over. A Florida jury recently made headlines when it handed down a \$1 billion verdict last month and likely set a record among verdicts brought against trucking companies.

The September 2017 crash in question occurred in Yulee, FL on I-95 and tragically took the life of Florida teenager Connor Dzion, 18. It involved a first semi driver crashing into an RV, which subsequently overturned and stopped traffic. A second semi driver then struck the line of stopped vehicles after failing to brake until just one second prior to impact, and ultimately caused the death of the teenager.

According to FreightWaves, the billion-dollar verdict was split as a \$100 million payment to Dzion's parents, who brought the suit, and a \$900 million punitive damages verdict against AJD. AJD is the company that employed the first driver and has been absent from all recent court proceedings. Their insurance was canceled two years ago and their DOT number is inactive—so, the damages brought against them are essentially uncollectible.

In order to understand why a jury would award a sum of that size to a company that seems to have ceased to exist, we must understand the concept of exemplary damages. Exemplary damages, often called punitive damages, are damages requested and/or awarded in a lawsuit when the defendant's willful acts were malicious, violent, oppressive, fraudulent, wanton, or grossly reckless.

In the past, I've written and spoken at length on the boom in nuclear verdicts, the rise of the supercharged plaintiff's bar, and how tenuous the legal landscape truly is. The crash in Florida, however, marks a more rare occurrence: not just an enormous dollar amount, but a huge chunk of that billion-dollar verdict comprising exemplary damages.

I firmly believe that the American jury system remains the best in the world. Our jurors are responsible and do the best they can to assess evidence and facts and determine a fair and just verdict. But companies can't ignore that jurors will punish those that show a total disregard for safety. You, the business owner, have the desire, the means, and the ability to develop a culture of care towards the community and a discipline for training and safety in the furtherance of your operations.

Risk management will keep you from scrambling in the event of an incident:

- **Telematics and dash camera systems** can provide real-time incident data and evidence so you can quickly assess fault and act accordingly.
- **NBIS preferred contract language** is a proven tool in your risk-management kit that increases your protection by successfully getting the responsible party to indemnify and defend you when an accident occurs.
- **Keeping up-to-date records—**from drivers' logs, to contracts, to training completion, it's all potential evidence. Take ownership over your documentation so you have full control over your company's narrative.
- A supportive insurance partner with an excellent **claims team** willing to use these risk management tools for your best possible protection within the respective state laws.

At the end of the day, legislative advancements like HB19 are helpful, but companies cannot and should not rely on them to protect their companies. Instead, the surest way to keep your operation healthy, profitable, and less at risk of succumbing to a nuclear verdict is to take charge of your risk management and safety programs.



ABOUT THE AUTHOR

Art Kirkner is vice president of claims for NBIS. With over 35 years of claims leadership, Kirkner has built a reputation for driving a customer-service-driven claims team.

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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.

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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.



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.

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.



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