

# Case study: understanding the complexities of rental equipment claims



In this DUAL case study, we explore how rented equipment can cause additional complexities in the event of a claim. Find out how DUAL navigated this instance with expertise and attention to detail.

“Words matter, so change them in your favor.”

Tyrone Silva, AVP - Risk Services

## Case background

In this scenario, the plaintiff bare-rented a Manitou 10210 telescoping boom forklift from the DUAL 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.

## Challenge

The DUAL insured rented the equipment with specific contract language requiring indemnity and was named as additional insured. Demand and tender for this case went back and forth for nearly two years.

## Resolution

Without the DUAL-preferred contract requiring indemnity and being named as an additional insured, the DUAL policy would have been primary since traditionally, coverage follows the vehicle. However, the defense and indemnity of the DUAL insured was

eventually accepted by AIG/Starr Indemnity because of the contractual obligation to indemnify the DUAL 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 DUAL insured. This resulted in a zero-loss payment, zero-expense payment and no incurred claim dollars on the insured loss run for this accident.

## Lessons

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

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.

**Contact our team today at [riskmanagement@nbis.com](mailto:riskmanagement@nbis.com) to work with the industry experts to ensure safety and protection against a wide variety of specialty transport risks.**

## Helping you do more

[dualinsurance.com](http://dualinsurance.com)