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# Rental Equipment: Commonly Overlooked Risks

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# Agenda

- Facts about Equipment Rental Industry
- Commonly Rented Equipment
- Claims Data
- Case Studies
- Insurance Considerations
- Contractual Risk Transfer Considerations
- Loss Control Considerations
- Special Considerations
- Summary and Takeaways

# Equipment Rental Is Big Business

- The equipment and event rental industry in North America is expected to finish the year with total revenue up 5.35 percent to **$61.56 billion**, the first time combined rental revenue for Canada and the United States has surpassed $60 billion, according to the American Rental Association (ARA).
- Construction Spending during October 2019 was estimated at a seasonally adjusted annual rate of **$1,291.1 billion** (U.S. Department of Commerce)

# Why Construction Firms Rent Equipment

- Financial, Tax & Accounting Reasons
- Pay For What You Use
- Obtain Current Technology
- Maintenance
- Storage
- Transportation

# Common Pieces of Equipment Rented:

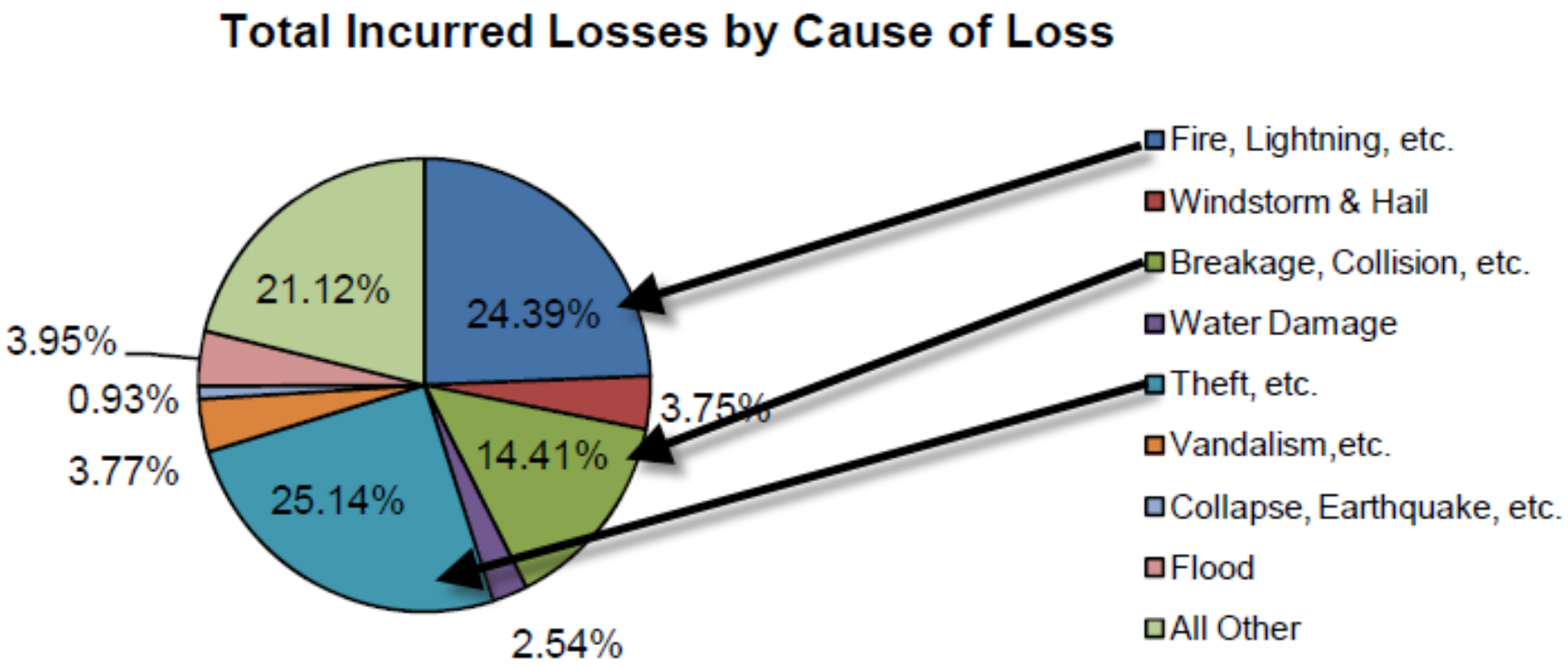
- Cranes: Tower, Crawler
- Welding
- Aerial Platforms
- Earth Moving Equipment
- Trash Trailers
- Porta-Potties
- Generators

*Provided With Operator or Without Operator*

# Common Perils / Sources of Loss:

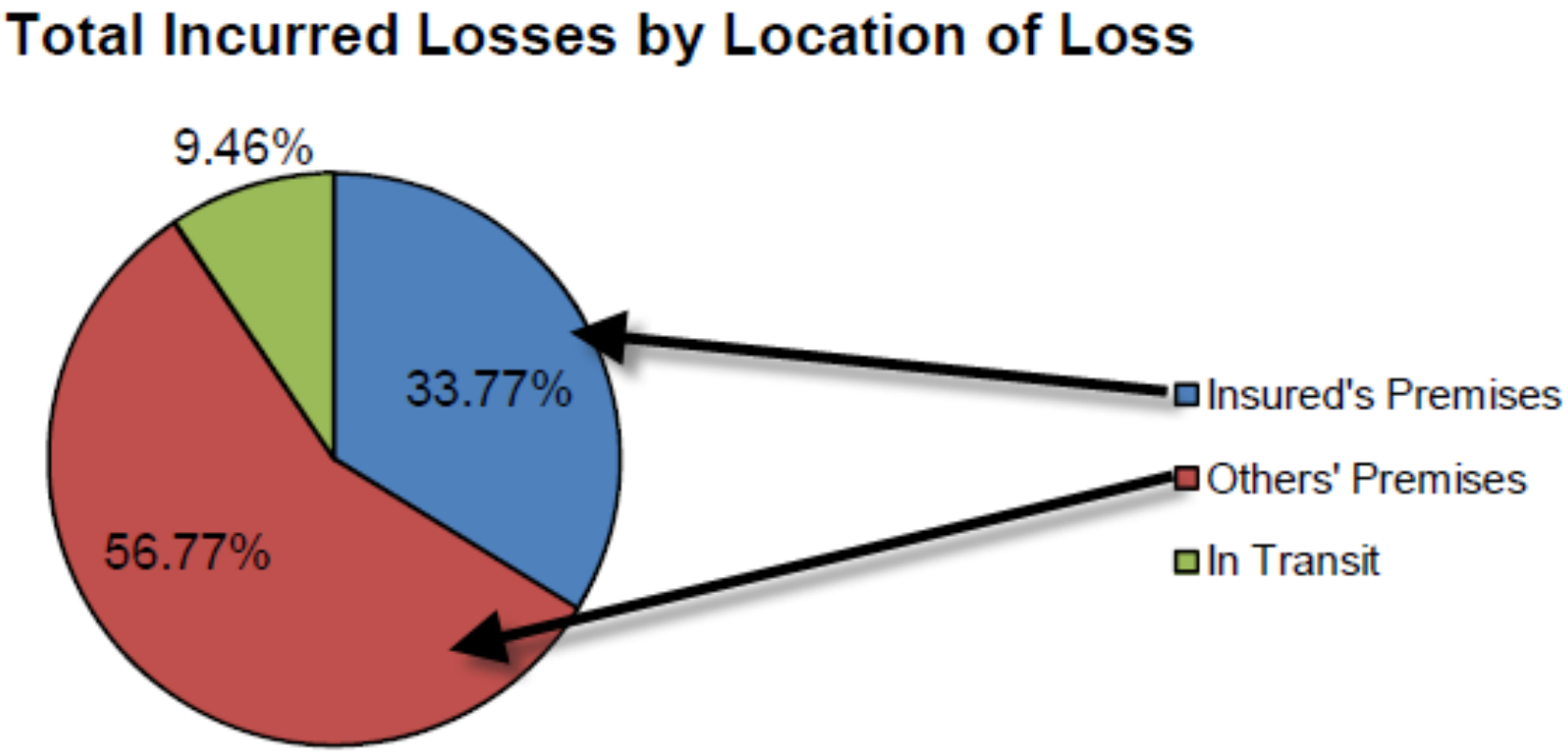
- Theft *Highest Frequency*
- Fire
- Human Error
- Collapse/Collision
- Windstorm/Hail
- Hurricane
- Flood/Earthquake

# Common Perils / Sources of Loss:




Source: Insurance Services Office, Inc. 2014 Circular AS-CM-2014-002

# Where the Losses Occur:




Source: Insurance Services Office, Inc. 2014 Circular AS-CM-2014-002

# Common Issues in Rented Equipment :

- **Insurance Programs** may not be designed appropriately at the lessor or lessee level to address certain property or liability risks
- **Contractual Indemnification and Insurance Requirements** may not appropriately address rented equipment especially with multiple layers of contractors
- **Subcontractor Vetting** process may not ensure that the indemnification is supported by insurance
- **Duty of Care** to Rented vs. Owned Equipment may different

# Case Studies

# Claims & Case Law

# Case Study #1:
# How Many Issues Can You Identify?

- Equipment Rental Company (Party A) rents pump to Contractor (Party B) on handshake deal
- Contractor then re-rents pump to Customer (Party C) with agreement that says Customer be responsible for equipment
- Pump was damaged under CCC of Customer and contract says Customer is responsible, but it's Contractors largest customer
- One-off Scenario
- Contractor never informed broker of actions/intentions

# Case Study #2
# Crane Collapse – Loss Scenario

- Project value $45 M
- Site constrained by proximity of existing buildings
- Schedule 45% complete
- Two identical hammerhead tower cranes on site
- First tower crane being dismantled on weekend
- Boom, jib, operator's cab and turntable were removed
- Vertical mast still standing
- Morning was calm; thunderstorm approaching
- Wind gusts 40+ mph

# Case Study #2
# Crane Collapse

# Case Study #2 Continued
# Crane Collapse – Summary

- Fast tracking
- Lack of second crane supporting mast
- Removal of de-torqued bolts at sections
- Procedures not followed but crew
- No pre-task plan to review procedures
- Lack of oversight by General Contractor
- Weather

# Case Study #2 Continued Claims Considerations

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## Liability issues

- Bodily Injury
- Property Damage
- Business Interruption, Delay in Startup

## Rented equipment issues

- Use of experts/consultants
- Contract wording regarding responsibility for damages
- Insured may not have control of repairs and may be responsible for repairs
- Challenges between the insurance company and rental company
- Valuations Basis; State Differences on Actual Cash Value

# Case Study #3

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Facts:

- GC rented hoist from equipment rental company
- While GC was using hoist, a component of hoist crushed the arm of a subcontractor's employee, resulting in amputation
- Plaintiff sued GC and rental company, and rental company was dismissed from case
- GC settled with plaintiff for $6.25 million and insurer for GC sought indemnity from rental company based on terms of lease agreement
- Lease agreement provided that:

  "To the fullest extent permitted by law… [rental co] shall indemnify and save harmless [GC],…against any and all …losses,…arising out of, in connection with, or incident to [rental co's] performance hereunder."

# Case Study #3 Continued

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Holding:

1. Since GC had operated and maintained hoist, plaintiff's injury did not originate or flow from rental and delivery of hoist.

2. Equipment lease is governed by state's anti-indemnity statute

3. GC's use of hoist constituted "willful misconduct" which voided indemnity agreement

# Practical Considerations

# Insurance, Contracts and Loss Control

# Insurance Program Design Considerations

## Where to insure the equipment?

- Rental Company
- Equipment Policy
  - Leased, Rented, Borrowed (loaned) to &/or from others vs. Direct Scheduling advantage
- Liability Policy
  - Care, Custody & Control Exclusion
- Property, Builders' Risk and/or Specialty Policies
  - Specialty Tools, Drones, etc.

# Insurance Program Design Considerations

## Varying Perspectives: GC, Trades, Rental

- Equipment/Property
  - Subcontractor Vetting – Is Insurance Supporting the Indemnity
  - Specialized Equipment example
  - Valuation Basis
  - Business Income, Loss of Use, Rental Reimbursement, Extra Expense
  - Leased, Rented, Loaned/Borrowed to &/or from others

- Liability
  - Subcontractor Vetting – Is Insurance Supporting the Indemnity
  - Limit Adequacy/Tiers - Bodily Injury, Property Damage Concerns
  - AI, WoS, Primary/Contributory, 30 Day Notices
  - CCC – ex. Riggers

# Contractual Risk Transfer Concerns Part 1 / 2

- Indemnity Framework:
  - Master Service Agreement, Rental Agreement?
  - Are terms and conditions incorporated by reference?

- Who should be responsible, fair risk allocation?
  - GC target on their back

- Anti-Indemnity State Issues
  - Choice of Law

# Contractual Risk Transfer Concerns Part 2 / 2

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<u>Contract Issues</u>

- Liability Caps
- Liquidated Damages and Construction Delays
- Agreements unsigned until after loss
- Rogue project managers signing agreements

<u>AI Coverage</u>

- Scope of coverage
- Privity

# Risk Management Considerations
# Loss Control

- Training
- Maintenance
- Project Oversight
- Weather Monitoring
- Emergency Planning
- Critical Lift Plan
- Subcontractor Prequalification

# Special Considerations

- Aviation (Aircraft, Drones)
- Maritime
- Cranes
- Project Insurance (OCIP/CCIP)
- States (Anti-Indemnity)
- Oilfield vs. Construction
- Residential vs. Commercial

# Best Practices Summarized

- Deliberate Insurance Program Design Around Rental Equipment
- Contracts Reviewed By In-House or External Attorney
- Project Risk Management Processes on Rented Equipment
- Robust Subcontractor Vetting to Incorporate Equipment Rental

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**Thanks for your time**

**Questions:**

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