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:

Total Incurred Losses by Cause of Loss

- Fire, Lightning, etc.: 24.39%
- Windstorm & Hail: 21.12%
- Breakage, Collision, etc.: 14.41%
- Water Damage: 3.75%
- Theft, etc.: 3.77%
- Vandalism, etc.: 2.54%
- Collapse, Earthquake, etc.: 0.93%
- Flood: 3.95%
- All Other:

Where the Losses Occur:

Total Incurred Losses by Location of Loss

- Insured's Premises: 33.77%
- Others' Premises: 56.77%
- In Transit: 9.46%

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 differ.
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

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

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

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

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

AI Coverage
• 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
Thanks for your time

Questions:
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