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By Matthew Shorr

Essential Elements of Job Tickets

How to make sure yours provide protection

A crane company was recently held negligent in a lawsuit when a man was struck by a crane at a jobsite. An inclusive job ticket (or lease contract) could have prevented this company from a multi-million dollar exposure by transferring liability to the customer. A typical job ticket serves several functions, including documenting type of equipment leased, hours worked, payment terms, and standard terms and conditions. Terms and conditions cover the equipment rental, the duties and responsibilities of the crane operator and the customer, and in the event of a loss such as indemnification and insurance, the customer's obligations in the case of default. Indemnity is a critical term in an agreement for crane lifting services.

Three types of indemnity

Indemnity is the obligation of a party to make good on a loss or damage that another party has incurred. Traditionally, indemnity falls into three types of agreements: a "Type I" specific indemnity, "Type II" general indemnity, and "Type III."

Had the crane company included a Type I indemnity agreement in the job ticket, they would have been potentially protected by the customer for numerous acts, including the active negligence of the indemnitee, in this case the crane operator.

Type I agreements are highly preferred indemnification contracts to be used in framing a crane operator's standard lease, given the hazards associated with lifting operations on construction projects.

While a **Type I** indemnity clause does not relieve the crane operator from liability, its advantage is that it transfers the burden to the customer, who has agreed to provide financial protection to the crane operator in the event of an accident or loss.

One of the hallmarks of a Type I agreement is an express inclusion of the customer's obligation to protect the crane operator, even when the operator's negligence actively causes or contributes to an incident or loss. Such a provision must clearly and explicitly provide coverage against the crane operator's own negligence in the language of the job ticket. An example of this type of agreement is as follows:

"To the fullest extent permitted by law, Customer shall indemnify, defend, protect and hold harmless Crane Operator from and against any and all claims (including bodily injury, property damage, or death), demands, obligations, actions and losses which may arise from, or are alleged to arise from, or in any manner relate to the operation, use, maintenance, direction or control of the equipment and furnished operating personnel operating such equipment, arising from or in connection with the performance of this agreement, regardless of any active negligence by Crane Operator, except liability or loss caused by Crane Operator's sole negligence or willful misconduct."

In this example, it is clear that the customer is to provide indemnification to the crane operator when the customer and the crane operator's actions or omissions combine or contribute to the incident or loss. "Sole negligence" means that between the parties listed in the indemnity agreement, the crane operator was solely responsible for all negligence. The negligence of the plaintiff or other third parties who may have contributed to the incident is irrelevant.

The crane operator's sole negligence or willful misconduct is excluded, in order to comply with California and most other states' anti-indemnity statutes, which prohibit indemnification for the promisee's sole negligence or willful misconduct.

A **Type II** or general indemnity provides the crane company protection for the crane operator's passive negligence; however, it would not provide protection for active contributory or sole negligence. Provisions to hold a crane operator harmless "in any suit at law," "from all claims for damages to persons", and from "any cause whatsoever," without expressly mentioning the effect of the crane operator's negligence are consistent with a Type II indemnity clause. An example follows:

"Customer agrees to defend, indemnify, and save Crane Operator free and harmless of and from any loss or liability, except that caused solely by the Crane Operator's negligence of any kind whatsoever."

The significant risk of utilizing a general indemnity agreement in a job ticket is that if the customer can establish that the crane operator's active negligence caused or contributed to the accident, the customer's obligation to indemnify can potentially be defeated. Depending on the indemnity language, or statutory law, the customer may still be obligated to defend against lawsuits.

A **Type III** indemnity agreement provides the least amount of protection. It protects against liabilities caused by the crane operator, but not for liabilities caused by others.

"Crane Operator promises to indemnify and defend Customer from liabilities caused or alleged to be caused by Crane Operator arising from the performance of the work or this agreement. However, Crane Operator shall have no obligation to indemnify Customer for its sole negligence or willful misconduct."

In this example, the crane operator receives no financial protection against its own negligence and only agrees to protect the customer against damage or loss caused by or due to their own acts.

If the crane service company in the example had been protected with a well-constructed job ticket, the burden of defending and providing financial protection in the event of an accident or loss would have potentially been transferred to the customer. Make sure your company's job ticket indemnity provisions are reviewed regularly to assure they comply with current statutory law and the court's interpretation of them.