The Importance of Fully Executed Crane Rental Tickets

By Matthew Shorr, Esq.

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Where indemnity is being sought against an injured worker's employer, the exclusive remedy rule codified in California Labor Code 3864 trumps the "course of dealing" rule. In order to protect both parties, crane rental job tickets must be fully signed before work begins to give rise to an enforceable agreement for indemnity.

All-too-common scenario

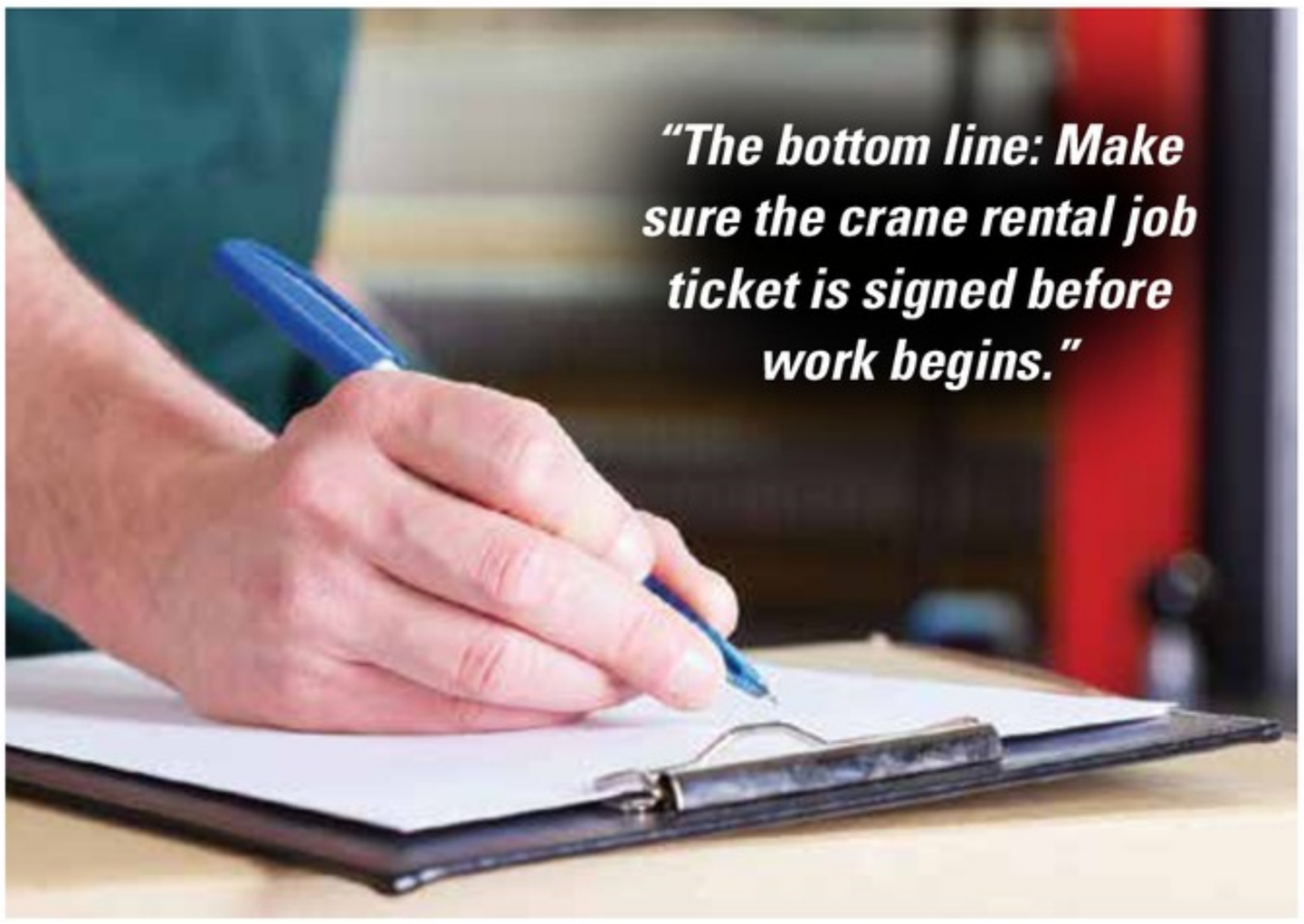
A crane service provider receives a request by telephone from a long-standing customer who is either a general contractor or subcontractor to dispatch a crane to a jobsite. The crane service provider subsequently dispatches a crane and operator to work at the customer's jobsite. Upon arrival at the job, the crane operator (or oiler) produces a standard-form job ticket for signature by the customer requesting the crane. Typically, the front side of the ticket contains a Start Work Authorization, which incorporates various enumerated terms and conditions on the reverse side of the ticket, in addition to the scope of work and other matters.

The terms and conditions of the ticket customarily contain provisions relating to insurance coverage and indemnity in the event of an accident. The indemnity agreement may require the customer to indemnify the crane service provider for claims, lawsuits, or damages arising from the crane service company's operations caused by, or alleged to be caused by, the concurrent negligence of the customer and the crane service provider. However, it excludes indemnity for the crane company's active negligence, sole negligence, or willful misconduct.

The crane operator or oiler signs the agreement, which is then countersigned by an authorized representative of the customer prior to the commencement of work. On occasion, however, either the customer or the crane operator may defer the execution of the ticket until the end of the work day, which on its face seems reasonable.

The customer and crane service provider may have a long-standing business relationship, in which similar or even identical tickets have been signed or countersigned, and payments have been made without incident over long periods of time. As a result, there may be quite a large number of crane rental agreements that have been signed by the parties in which the customer has implicitly, if not explicitly, assented to the rental agreement terms and conditions.

A construction site incident involving the crane then occurs, giving rise to serious personal injuries or a fatality. However, on the day of the subject incident, while the customer's jobsite foreman may have signed the Start Work Authorization prior to the commencement of work, the crane operator nevertheless failed to countersign the ticket, believing that he would do so at the end of the day, after the hours for labor and other costs associated with the job have been determined. Following the incident, the crane service provider tenders its defense and indemnity to the customer. The customer (or its insurance carrier) then refuses to defend and indemnify the crane service provider, and litigation ensues.



Insulated from indemnity

California Labor Code sections 3601 and 3864 provide that worker's compensation is the exclusive remedy for work-related injuries, and it extends immunity to the injured worker's employer from civil liability, unless the employer and the third party have entered into an executed written agreement for indemnity prior to the injury.

California Labor Code section 3864 has been subsequently interpreted to mean that an express indemnity agreement must have been in existence between the employer and the third party, and signed by representatives of each prior to the date of the alleged incident, which is the subject of the request for indemnity. City of Oakland v. Delcon Associates (1985) 168 Cal App.3d 1126, 1128-1129. See also, Hanson Mechanical, Inc. v. Superior Court of Los Angeles County (1995) 40 Cal. App. 4th 722.

The indemnity clause contained on the crane rental agreement between the crane service provider and the customer must comply with California Labor Code section 3864 in all respects to be enforceable. The purpose of Labor Code section 3864 was to eliminate an employer's liability under an equitable or implied indemnity theory when its employee is injured during the course and scope of his employment due to the negligence or partial negligence of a third party. Thus, 3864 restricts the employer's responsibilities to those imposed by the worker's compensation laws and insulates it from indemnity claims unless they are based on an express contract of indemnity executed by the employer prior to the injury. The term "executed" has been strictly interpreted to mean signed by both parties before the injury occurs.

However, in Marin Storage & Trucking, Inc. v. Benco Contracting and Engineering, Inc. (2001) 89 Cal. App. 4th 1042, the California Court of Appeal held that an agreement for defense and indemnity contained on the reverse side of crane service provider's job ticket could be found through a long-standing course of dealing between the parties. It, therefore, found the agreement enforceable. In Marin Storage, a crane service provider that leased cranes for hoisting and rigging services, sued its general contractor customer and sought indemnification for attorney's fees incurred after both parties were sued by a subcontractor's employee who was injured on the job. The customer did not sign the agreement until after the incident, and then sought to contend that the agreement was therefore unenforceable.

The crane service provider had entered into short-term hourly rental agreements with Benco for several years. Benco had also never asked for the rental agreement terms to be modified in any way, and had consistently paid the crane service provider for its services. How do these rulings square with one another? The answer is that the exclusive remedy rule codified in Labor Code 3864 trumps the "course of dealing" rule recognized by the court in Marin Storage. The bottom line: Make sure the crane rental job ticket is signed before work begins. ▮