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When Cranes Collapse, Cos. Don't Have To Follow

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A crane is being used to lift a heavy load to the top of an adjacent building when, in an instant, disaster strikes. Whether it is a gust of wind, a mechanical failure, or any number of other causes, the crane and its load topple to the city street below, crushing everything in its path.


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Cranes are vital to the construction industry. However, due to their size and the loads transported through the air when crane accidents occur, they can have devastating consequences to construction companies, their employees, crane manufacturers, inspectors, repairmen and even the general public.

This article examines things attorneys can do to help ensure their clients are in the best position to defend against crane litigation.

Recent Crane Collapse Cases and Litigation

On May 30, 2008, Donald C. Leo was operating a crane in Manhattan. Due to a faulty repair weld performed by a Chinese-based company, the crane collapsed, killing four people. In a wrongful death lawsuit against the owner of the crane, the plaintiffs for two decedents were awarded more than $96 million in compensatory and punitive damages.[1] The owner was forced to file for bankruptcy protection in 2016.[2]

Similarly, on Nov. 17, 2009, Larry Naquin Sr. was operating a crane in Houma, Louisiana, which was being used to lift a 60,000 pound test block to determine whether the crane was still safe for use. Due to a faulty weld, the crane separated from its pedestal (base) and toppled over into a building, killing a co-worker. Naquin, who jumped from the crane house during the accident, suffered severe injuries, and brought a lawsuit against his employer. The jury awarded Naquin $2.4 million in damages.[3]

As recently as Feb. 5, 2016, a crane in Manhattan toppled over in high winds, killing one pedestrian and seriously injuring several more. Litigation has already been filed for this high-profile accident.[4]

Helping Clients Prevent and Defend Against Crane Litigation

A crane accident provides numerous targets for plaintiff attorneys. These targets include the owner/general contractor, the crane operator and the manufacturer. The following sections outline potential vulnerabilities of these different entities in crane litigation and things their attorneys can do to help them better defend against such lawsuits.

The Owner or General Contractor

Most of the responsibilities of the owners or general contractors of a construction site are governed by contracts. While most of these contracts are "form" contracts, attorneys should work with their owner or general contractor clients to ensure these contracts clearly outline what responsibilities your clients have and more importantly do not have.

First, you should ensure the contracts properly identify the entity responsible for jobsite safety, worker training and equipment inspections. If your client intends to delegate these responsibilities, they must say so in the parties' contracts. It is also important to know the law governing your client's construction project as some jurisdictions will not allow the owner or general contractor to contract away safety obligations. You must be aware of these legal nuances and advise your clients accordingly.

Next, you should ensure contract documents include necessary risk shifting provisions. This should include the strongest indemnity provision permissible by the law. Construction contracts typically include standard indemnity provisions, but, where possible, you should help your client include favorable, one-sided indemnity provisions, including a duty to defend. Duty to defend provisions are often interpreted broadly and courts may require an entity to defend your client even if the full indemnity provision is not triggered.[5]

All owners and general contractors should require their contracting parties to name them as an additional insured. The contract should spell out the type of insurance policy, the policy limits and remedies for the contracting parties' failure to comply with this additional insured provision. If your client does not take steps to ensure it has actually been listed as an additional insured, the contractual requirement could be rendered meaningless.

Finally, work with your client to proactively implement measures to ensure they are complying with their own jobsite safety policies. One of the easiest targets for a plaintiff attorney in crane litigation is a company who has robust safety policies, but fails to follow them.

The Construction Company Operating the Crane

Construction companies that utilize cranes should take measures to prevent the occurrence of such accidents. Preventative measures can be generally summarized in three categories: (1) maintenance; (2) inspection; and (3) certification/training. Attorneys for these entities should address these issues before accidents occur.

Proper maintenance and inspection, or lack thereof, is an easy target typically exploited in crane litigation. Proper procedures must be in place to comply with pertinent maintenance and inspection standards. As shown above in the Leo/Kurtaj and Naquin crane collapses, proper maintenance or inspection may have prevented these tragedies and saved the defendants more than $100 million in

litigation damages and attorneys' fees.

Maintenance and inspection standards originate from multiple sources, including industry standards such as the American National Standards Institute, the Occupational Safety and Health Administration and International Organization for Standardization. However, crane manufacturers — via their operation/service manual or the construction site safety manual — often outline more stringent maintenance and inspection standards. It is not sufficient to follow the regulatory standards if the crane manufacturer requires more rigorous maintenance and inspection requirements. The best practice is compliance with the most stringent standards applicable, regardless of the source. Likewise, clients should retain the maintenance and inspection records as required by these various standards. Performing proper maintenance and inspections means nothing if your client does not have the records to prove it.

Further, requiring certification (or training) of workers integral to the operation of the crane — such as operators, signal persons and riggers — can also prevent the occurrence of accidents. As shown by states such as California, prevention through certification is not just theoretical.

On June 1, 2005, California passed a regulation requiring mobile and tower crane operators to be certified.[6] A significant decline in the number of crane-related fatalities and injuries in California was seen after training and testing from 2004 to 2008 produced more than 10,000 certified operators in the state.[7] California's Division of Occupational Safety and Health (DOSH) reviewed the records of citations and accident descriptions three years before and after the regulation was enacted.[8] After removing all incidents involving cranes that did not require certified operators, as well as other incidents not related to crane operations, DOSH reported the following:[9]

June 1, 2002 to May 31, 2005	**Fatal Accidents**	**Injury Cases**
High-voltage line contacts	5	7
Struck by loads	4	18
Mobile cranes overturned	1	5
Total Cases	10	30

June 1, 2005 to May 31, 2008	**Fatal Accidents**	**Injury Cases**
High-voltage line contacts	1	4
Struck by loads	0	3
Mobile cranes overturned	1	6
Total Cases	2	13

Moreover, OSHA is implementing crane safety guidelines with regard to certification, maintenance and general safety.[10] The rule, which was published in the Federal Register on Aug. 9, 2010, was originally set to take effect on Nov. 8, 2014 (after a four-year compliance window).[11] However, that compliance date was continued by OSHA to Nov. 10, 2017.[12] Under this regulation, operators of most cranes used in construction above a 2,000 pound capacity will need to be either (1) certified by an accredited crane operator testing organization or (2) qualified through an audited employer program.[13] In addition, signal persons and riggers will also need to be qualified under various processes defined by the regulation.[14]

For attorneys considering whether these new requirements provide a preemption argument, at least one court[15] has held OSHA's regulations do not preempt local statutes and regulations that governed the use of cranes. In that case, the plaintiff, Steel Institute of New York, brought a lawsuit against the city of New York claiming the city's local statutes and regulations governing the use of cranes in construction were preempted by OSHA's new regulations. The lower court granted the city's summary judgment motion, which was affirmed by the Second Circuit on appeal. The Second Circuit held regulations were of "general applicability" because they "regulate[d] workers simply as members of the general public." The city's laws provided additional or supplemental requirements in the areas regulated by OSHA. Because the city's laws did not conflict with OSHA's standards, they were not preempted [16].

Given the financial magnitude of crane accidents, which result in millions of dollars of property damage alone, it is imperative that all construction companies utilizing cranes take defensive measures to prevent the occurrence of such accidents. This can be most effectively accomplished by ensuring your clients' employees are properly certified and they perform the most stringent maintenance and inspections required.

The Manufacturer

The implementation of OSHA's regulation in late 2017 could shield crane manufacturers from being named in lawsuits, or provide improved litigation defenses, when accidents do occur and lawsuits are imminent.[17] As shown by the focus of the new regulation, OSHA recognized that the construction industry, not the manufacturer, is best positioned to prevent the occurrence of these accidents. As a result, future plaintiffs will likely focus on allegations against construction entities for failure to comply with OSHA's new guidelines, absent obvious manufacturing or design issues pointing to the manufacturer.

Despite this focus, manufacturers can still potentially be on the hook for potential damages resulting from crane accidents. OSHA identifies four of the major causes of crane accidents as: (1) contact with power lines; (2) overturns; (3) falls; and (4) mechanical failures.[18] While noncompliance with the new OSHA regulations, such as negligent operation or maintenance, can potentially apply to all four of these causes, so too can defects in the design or manufacture of cranes.

For these reasons, it is important that manufacturers continue to improve their crane designs and manufacturing processes to prevent these types of accidents from occurring. Prevention could include, for example, the inclusion of proximity sensors to prevent contact with power lines. Manufacturers may also come up with new crane designs to either prevent or reduce the occurrence of these four major causes of accidents, as well as other causes not mentioned.

Likewise, manufacturers must continue to develop and incorporate state of the art warnings consistent with evolving industry practices and standards. This includes both on-product warning labels as well as all product literature that accompanies the crane (e.g., operator's manual, sales brochures, etc.). Manufacturers should also consider what language(s) to use for their warnings.

Finally, manufacturers should develop a policy and procedure for issuing customer bulletins. There are a variety of customer bulletins (informational, parts/service, safety, etc.) manufacturers should utilize to inform customers about changes to their products or potential safety considerations. In addition, you need to assist your clients in developing ways to ensure their customers actually receive these bulletins (e.g., certified mail). Manufacturers can mitigate liability in crane litigation by proving they notified their

customers of a potential risk.

By keeping an eye toward accident prevention, manufacturers will have the added benefit of shielding themselves from potential bet-the-company type litigation.

With damage claims potentially reaching into the $100 million range for one accident, all parties involved in the use of construction cranes, with counsel from their attorneys, must take preventative measures to protect themselves, and each other, from financial and physical ruin.

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[1] http://www.law360.com/articles/686986/ny-crane-collapse-verdict-tops-96m-for-victims-families.

[2] http://www.law360.com/articles/743637/crane-operator-seeks-ch-11-after-96m-judgment?article_related_content=1.

[3] Naquin v. Elevating Boats, L.L.C. (5th Cir. La. 2014) 744 F.3d 927.

[4] http://www.nydailynews.com/new-york/man-injured-manhattan-crane-crash-sue-city-30m-article-1.2569408.

[5] See, e.g., Crawford v. Weather Shield Mfg., Inc., 44 Cal. 4th 541 (Cal. 2008).

[6] http://www.nccco.org/nccco/news-center/archived-press-releases/news/2008/10/21/california-crane-fatalities-drop-after-certification-introduced.

[7] Id.

[8] Id.

[9] Id.

[10] 29 CFR Part 1926 (Section 1926.1400, et seq.).

[11] Id.

[12] Federal Register Volume 79, Number 187 (Friday, September 26, 2014).

[13] 29 CFR Part 1926 (Sections 1926.1400-1926.1442.)

[14] Id.

[15] Steel Inst. of New York v. City of New York (N.Y. 2d Cir. 2013) 716 F.3d 31.

[16] Id.

[17] See, e.g., 29 CFR Part 1926 (Sections 1926.1400-1926.1442.)

[18] Federal Register Volume 75, Number 152, p. 47910 (Monday, August 9, 2010).