



Construction Industry Update

Managing Risk in a Construction Company

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There is no line item on a construction company's income statement titled "Cost of Risk," but this is typically one of the industry's largest and most volatile expense items. Some construction companies pay 5% or more of their gross income for risk related costs. In an industry with tight profit margins, effectively managing risk can sometimes mean the difference between making a profit or not, and in some cases the survival of the business.

What Is Cost of Risk?

Cost of Risk is typically defined to include:

- **Insurance Premiums** – These include but are not limited to general liability, auto, property, excess, workers compensation, professional liability, pollution liability, employment practices liability, inland marine, surety, and employee benefits.
- **Time spent analyzing and managing risk** – This includes the time invested to identify potential losses and their causes and deciding on a strategy to manage those losses. It also includes time spent managing your safety program, human resources and claims.
- **Time spent dealing with losses** – This could involve efforts to work with employees and designated clinics for a workers compensation claim, dealing with an insurance adjuster on a property claim, or participating in your defense of a lawsuit against your company.
- **Retained Losses** – Losses are either retained on purpose (deductibles, self insured retentions or self

insurance) or by accident. Effective risk management should help avoid retaining a loss accidentally.

What is Risk Management?

Traditional Risk Management focuses on what is called **Hazard Risk**. Hazard Risk, as opposed to Business Risk, deals with accidental or fortuitous losses. These risks involve the potential for loss without any corresponding possibility of gain. **Business Risk**, on the other hand, deals with the risk of conducting business. It includes the possibility of loss, no loss, or gain. Investment in a new piece of machinery or acquiring another entity are examples of business risk. Collectively, Hazard Risk and Business Risk make up what is known as **Enterprise Risk Management**.

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Most construction companies focus on Hazard Risk or Traditional Risk Management, which is the subject of this article.

In its simplest form **Risk Management** involves the identification, evaluation, and management of a company's exposures to loss. A **Loss Exposure** is defined as any condition that could result in financial loss to an organization. In other words, Risk Management attempts to mitigate the occurrence of losses while initiating advance planning to assure that adequate funds will be available to cover those losses that occur. The primary function of Risk Management is to protect the assets and financial viability of the company, and secondarily, to lower the total cost of risk.

Whether or not someone has the official title of "Risk Manager" in your company doesn't matter; someone is managing your risk. Of course, if you don't know who that is, your risk may not be managed very well. The first step in an effective Risk Management program is to designate an individual or those individuals who will be responsible for this function.

The Risk Management Process

To effectively manage risk it helps to develop a systematic approach. There are a number of ways to do this, but all approaches basically involve the following steps.:

- Risk Analysis
- Risk Control
- Risk Transfer
- Risk Review and Refinement

Our approach to managing risk with our clients is called the **Risk Management Process**.



Risk Management Seminars

2009 Series

450 B Tower, 450 B Street, Suite 1800, San Diego, CA 92101-8005

- **7 Habits of Frequently Sued Managers**
Thursday, August 27, 2009 — 7:30 - 10:30 a.m.
- **Sexual Harassment Prevention Training**
Satisfies AB1825 requirements
Friday, September 11, 2009 — 8:00 -10:30 a.m.
- **Fall Protection and Scaffold Awareness Training**
Friday, September 18, 2009 — 8:00 a.m. - 2:30 p.m.
- **Strategic Human Resources**
Friday, September 25, 2009 — 8:00 - 10:30 a.m.

All training sessions available to our clients
Reserve early — seating is limited! *

For more information about upcoming seminars, contact
Darcee Nichols at dnichols@cavignac.com or
619-744-0596.

* **NOTE:** Due to the popularity of our seminars and limited seating, we regret **we cannot provide refunds or credits with less than 72 hours advance notice of cancellation.**

Risk Analysis

Risk Analysis is the first and perhaps the most important step in the Risk Management Process. The purpose is to identify loss exposures — things that, if they go wrong, could cost the company money. There are only four types of loss exposures:

- Property
- Loss of Income
- Personnel
- Third Party Liability

The correct way to identify and analyze exposures is to do so systematically using an exposure analysis program or checklist. In addition to the checklist, things such as financial statements, flow charts, contracts, marketing materials etc. can be helpful. Once exposures have been identified, they need to be analyzed. Some exposures are minimal and can be retained. Others lend themselves to being controlled, and still others will need to be transferred, avoided, or financed. The key is being proactive in this process. It is better to understand your

risks and make conscious decisions about how to handle them than to find out at the time of a loss that you are uncovered and unprepared.

Risk Control

Risk Control involves any strategies or techniques you can implement to lower the frequency and/or severity of a loss exposure. Risk Control includes Safety, Claims Management and Human Resources.

Safety is critically important to a construction company. Put bluntly, unsafe companies won't survive long. A poor safety record and loss history can drive a company's insurance costs so high that they simply can't compete. Every construction company should have someone responsible for safety. Like a lot of things, most safety issues are fundamental and straightforward.

- Is your Injury and Illness Prevention Program (IIPP) valid and compliant with the California Code of Regulations?
- Are your supervisors familiar with your safety program and are they able to teach and monitor your program?
- Are your safety meetings effective?

You and your safety officer should do a self-analysis of your company's safety culture and determine where you need to improve. Work with your broker and insurance company to develop a **Schedule of Risk Control Services** which will help you accomplish your objectives.

Claim Management is equally as important. Even the best run firms will have accidents. How you manage an accident can have a material affect on the ultimate cost.

- Have you appointed a **Risk Manager** or **Claim Supervisor** in your company who is responsible for coordinating all claims and accidents?
- Have the appropriate individuals in your company (job superintendents, project managers, etc.) been educated in **Post-Accident Response Training**?
- Have you designated a **Medical Provider Network** for workers compensation claims?

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Risk Definitions

Loss Exposure — Any condition that presents a possibility of loss, whether or not an actual loss occurs.

Risk Analysis — The process of identifying and analyzing exposures to loss.

Risk Control — Strategies and techniques designed to reduce the frequency and severity of a loss exposure.

Risk Management — The practice of identifying and analyzing loss exposures and taking steps to minimize the financial impact of the risks they impose.

- Have you developed an **Early Return to Work Program**?
- Have you established a relationship with your broker's Claim Manager as well as your insurance companies claims adjusters?

Human Resources (HR) are also a major area of concern for most construction companies. The challenge of making certain your HR practices comply with the myriad of laws and regulations imposed by the numerous organizations that deal with these issues is mind numbingly difficult.

- Do you have a full time HR staffer or have you appointed someone in your company to handle this function?
- Has your Employee Handbook been reviewed for compliance?
- Have your supervisors been through Sexual Harassment Prevention Training (AB 1825)? This training is required for all employers with 50 or more employees.
- Are you confident that your hiring, firing, and discipline policies and procedures are legal and effective?

Once again, the key is to identify where you need to get better and then develop a **Schedule of Services** to accomplish your objectives. There are numerous tools available to help a company improve its HR practices (HR That Works, a Web-based resource, is one of the best). The key is identifying where you need to improve.

Risk Transfer

Once you have identified and analyzed your risk and developed Risk Control techniques to lower the frequency and severity of your loss exposures it is time to consider **Risk Transfer**. Risk Transfer includes retention, contractual risk transfer and insurance risk transfer.

Risk Matrix

		Loss Frequency	
		Low	High
Loss Severity	Low	Retain	Retain and Implement Loss Prevention Measures
	High	Insure and Implement Loss Reduction Measures	Avoidance

Managing Risk (continued from page 3)

Retention can be purposeful or accidental. Ideally it is purposeful. Some exposures are low severity and should be retained and managed. Other exposures are low frequency and high severity and should be transferred (usually insured). Finally, some are high frequency and high severity and should be avoided. Regardless you should decide how much risk you want to retain and tailor your insurance program accordingly with appropriate deductibles and self insured retentions.

Contractual Risk Transfer is a significant issue for construction companies. Whether you act as a general contractor or a subcontractor, risk is transferred every time you sign a contract. Generally risk is transferred through an indemnity agreement; however, other aspects of the contract are important as well.

- Do you understand the risk you are being asked to assume?
- Do you know if it is insurable?
- Do you know if your insurance program meets the insurance requirements of the agreement?
- Are your subcontract insurance requirements adequate and reasonable?
- Do you have an attorney and insurance broker you can utilize when you have questions or issues?

Insurance Risk Transfer is the most common form of Risk Transfer. Basically you are agreeing to transfer the potential consequences of certain specified loss exposures to an insurance company for an agreed-upon cost or premium. Insurance is often the most expensive component of the Cost of Risk, but there is a reason it is the third step in the Risk Management Process. It is only after you have identified and analyzed your exposures

and implemented effective Risk Control techniques that you can determine what you want to insure.

If you have done the first two steps correctly you should be in a position to approach the insurance marketplace with a well thought out submission that highlights the attributes of your company's risk management efforts and why you are a better than average risk from the underwriters standpoint and why you deserve a favorable rate.

- Have you aligned yourself with the right insurance broker? One who understands construction and has the staff and relationships to effectively market your program (self serving I know, but this is probably the most important element of insurance risk transfer).
- Are you with the right insurance company?
- Have you given thought as to whether or not it makes sense to market your program (we don't recommend you market your program every year)?

Risk Review and Refinement

Risk Management is a process that does not end with Risk Transfer. Exposures change and need to be effectively managed. Service issues for construction companies are significant. Providing Certificates of Insurance and tracking Certificates of Insurance alone are a huge task. Your designated Risk Manager needs to be kept in the loop on any changes that might affect the company's Risk Management program, and he or she needs to communicate this information in a timely manner to your insurance broker.

Summary

Cost of Risk is a concept many construction firms have never thought about despite the fact that it is one of their largest expense items. An effective Risk Management Process will provide a logical approach to managing the risks that a construction firm faces. The process doesn't have to be complex; as a matter of fact, it should be simple and straightforward. The key is to have the support of the company principals and a qualified insurance professional who can quarterback the process. ✨

Disclaimer: This article is written from an insurance and surety perspective, and is meant to be used for informational purposes only. It is not the intent of this article to provide legal advice, or advice for any specific fact, situation or circumstance. Contact legal counsel for specific advice.

Fire Prevention Plans

Don't Get Burned!

By Stuart Nakutin, CSA, COA, CET, WCCP, CHMC
Director of Loss Control and Safety

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There are some 100,000 workplace fires every year in the United States, resulting in losses in the billions of dollars. The human toll is high as well. The National Safety Council estimates that fires and burns account for 3 percent of all occupational fatalities.

Because of the substantial risks and costs associated with workplace fires, OSHA requires you to have a fire prevention plan (29 CFR 1910.39) that incorporates:

- A list of the major workplace fire hazards, proper handling and storage procedures for hazardous materials, potential ignition sources and their control, and the type of fire protection equipment needed to control each major hazard
- Names and job titles of employees responsible for maintaining equipment installed to prevent or control sources of ignition and fires
- Names and job titles of employees responsible for controlling fuel source hazards
- Procedures for controlling accumulations of flammable and combustible waste materials
- Procedures for regular maintenance of safeguards installed on heat-producing equipment to prevent the accidental ignition of combustible materials

Fire Prevention Policy

- Does your fire prevention policy include all of OSHA's requirements? Do you even have one?
If not, we do, and it's already written and ready to use, along with every other safety policy you're likely to need.
- OSHA also recommends that you include key elements from your emergency action plan (29 CFR 1910.38) in your fire prevention plan, such as:
 - Emergency evacuation procedures and exit route assignments
 - Procedures for employees who must stay behind to maintain or curtail critical operations before evacuation
 - Procedures for counting heads after evacuation is complete
 - Rescue and medical duties for those assigned to perform them
 - Procedures for reporting a fire or other emergency
 - Names and job titles of employees who can dispense information about the emergency action plan



Your written fire prevention plan must be made available to employees for review unless you have ten or fewer employees in a facility, in which case you can communicate the plan orally.

Additional Considerations

- **Liability** — Fire prevention plans make sense, on a pragmatic level, for controlling potential liability. The death of a worker from a fire or emergency-related cause in the workplace can subject companies to federal prosecution if OSHA standards were not met. When OSHA conducts workplace inspections, it checks to see if employers are complying with fire safety standards.
Preventing fire-related deaths in the workplace can be as simple as properly marking fire exit locations, periodically testing fire-extinguishing and alarm systems, and developing effective evacuation plans. To better protect your organization from liability, have an attorney look over your emergency action plan and fire prevention plan to verify completeness in addressing compliance issues.
- **Unions** – Before any drastic changes to a fire prevention or emergency action plan are implemented, they must be discussed with union representatives. The safety of employees is a mandatory bargaining issue and any unilateral change to an evacuation procedure will need to be discussed before its implementation.
- **Shift workers** – All employees have to be able to move quickly and appropriately if there is an emergency situation. To achieve this end, you must conduct emergency training and fire drills for workers on all shifts. This includes scheduling fire drills on each shift. Every employee must have the opportunity to actually hear what the fire alarm sounds like and to participate in drills.

Your fire prevention plan is one very important piece of a comprehensive fire prevention policy that brings together all the elements of workplace fire prevention from planning to implementation. ✨



Articles courtesy of Cavignac & Associates Employee Benefits Department

LIVE WELL, WORK WELL

Away, Foodborne Illness!

As a wise food consumer and citizen, what can you do to protect yourself and your family against foodborne illnesses this summer *and* all year-round? Here are some suggestions:

- Purchase American and/or Canadian produce when available. Though inspections are not top-notch, they are far better and more frequent as compared to other parts of the world.
- Purchase irradiated foods. These are perfectly safe to eat, and irradiation kills pathogens that can make you sick in meat, poultry, eggs, vegetables and fruit.
- Refrigerate perishable foods, prepared foods and leftovers within two hours of buying, cooking or serving them.
- Wash all produce several times and use separate cutting boards and utensils from the ones you use for meat.
- Limit how long you leave raw meat in the refrigerator – only 1-2 days for ground meats, sausage and poultry; 3-5 days for beef, pork and veal. If you want to keep them longer, put them in the freezer, which prevents bacteria from growing quicker. ✨

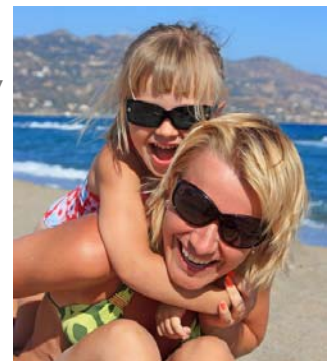
Watch the Clock!

Refrigerate perishable foods within 2 hours of purchase to avoid foodborne illness!



Hitting the Road?

If you're planning to take a family vacation this summer, you are probably wondering if you need a new suitcase or who will watch your pets and get your mail. However, you should keep your children in mind. Some get anxious about leaving home, even if it's with family. If your child is one of them, try these tips:



- If your children are old enough, ask them to help you plan the vacation. They will be pleased they helped and feel excited when their portion of the trip arrives.
- Get your children books, pictures, or brochures about where you are headed if it is an unfamiliar location. Explain why you chose this site and what types of things you plan to do upon arrival.
- Ensure everyone gets a good night's sleep the night before a trip. It will lessen the stress of the morning rush.
- If you are going on a long road trip, keep your children busy. Bring food, games, books, etc. to keep their minds off the length of the car ride.
- Let your children bring something familiar from home such as a blanket, stuffed animal, or picture of their friends or pet.
- On the trip, don't force your children to endure adult-oriented activities such as formal dinners, long museum visits or plays in languages they don't understand. Stick with trips to the zoo, beach, park, or souvenir shop.
- Pack extra food made especially for kids, such as juice boxes, fruit snacks and granola bars. Your children may be picky in certain restaurants.
- If you will be away from home for an extended period of time, allow your children to call their friends or the person who is pet-sitting so that they can hear a familiar voice and find out what is going on back in their world. ✨

It's Not Too Late to Plan for 2009!

Have you received a raise? Did your child graduate from college? Did you graduate? Congratulations! Consider decreasing your taxable income and increasing your retirement savings.

- Many retirement plans have quarterly or semi-annual entry dates. If you are not already participating in your plan, consider joining on the next entry date.
- If you are already participating, consider increasing your deferrals. You may also want to consider contributing to a traditional or Roth IRA. For 2009, you can generally contribute up to:
 - ◆ IRA: \$5,000
 - ◆ SIMPLE plan: \$11,500
 - ◆ 401(k) or 403(b) plan: \$16,500
- If you turn 50 at any time during 2009, you may be eligible to make catch-up contributions. For 2009, the maximum catch-up contribution is:
 - ◆ IRA: \$1,000
 - ◆ SIMPLE plan: \$2,500
 - ◆ 401(k) or 403(b) plan: \$5,500 ✨



Dine and DASH!



Are you looking for a healthy, low-sodium version of your favorite comfort food? Try this recipe, straight from the

National Heart, Lung and Blood Institute. It's part of the institute's DASH (Dietary Approaches to Stop Hypertension) eating plan. ✨



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Turkey Meatloaf

- 1 pound lean ground turkey
- 1/2 cup regular dry oats
- 1 large egg
- 1 tablespoon onion (dehydrated flakes)
- 1/4 cup low sodium ketchup

Combine all ingredients and mix well. Bake in a loaf pan at 350° F for 25 minutes, or to an internal temperature of 165° F. Cut into five slices and serve.

Makes five servings. Nutritional information per serving: 191 calories, 7g fat, 74mg sodium, 23g protein.

Community Bulletin Board

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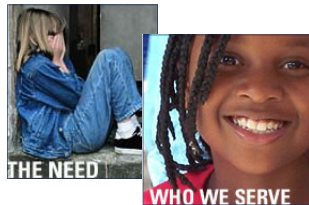


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