Planning, prevention, and control for an effective risk-management program

Timothy G. Galarnyk

Each year more than 1000 workers lose their lives in construction-related incidents. These losses, however, are not widely publicized. If they were, the public might be outraged by the needless loss of lives arising from construction incidents that are, for the most part, entirely preventable.

Sixty-three percent of the world's largest construction firms identify their biggest challenge as properly managing and pricing construction risks. Design-build trends, larger and more complex projects, market consolidation, and ever-increasing litigation theories are the primary factors for this concern.

When the opportunity arose to present topics on construction risk management for the *PCI Journal*, Construction Risk Management Inc. (CRM) could not turn down the chance to make a difference in this industry sector.

How serious is your company in identifying and providing the necessary resources for a corporate culture in safety? Has your company committed the appropriate attention and resources to managing the risks associated with safely and successfully operating your business? Is your company fully prepared to protect its assets—employees and capital—from the risks associated with operations?

If you can immediately say yes to these questions, your company has faced its challenge for future success. If not, disaster is possible.

In 2005, a portion of British Petroleum's (BP's) refinery in Texas City, Tex., exploded, killing 15 and leaving 500 injured in what has been described as the worst U.S. industrial disaster in a decade. BP is now faced with accusations that it failed to provide adequate resources to ensure safety at its U.S. refineries and that it lacked a serious corporate safety culture within its management.

These accusations will most certainly result in criminal charges being filed and add to the evidence to be used in numerous outstanding civil litigation cases. A union official, who is representing the BP workers, commented that the union hoped that the recommendations (contained in a recently released report authored by a panel led by former Secretary of State James Baker) "are the first steps in changing [BP's] culture."

The union's promotion of the compliance with best safety practices of its 4300 members would have encouraged a strong safety culture within all of BP.

It seems that this incident fits the traditional definition of *accident*; however, the true meaning of the word and the investigation completed so far suggest otherwise, when considering the actions of some of those involved. According to Merriam-Webster Online, an accident is "1a: an unforeseen and unplanned event or circumstance ... 2a: an unfortunate event resulting especially from carelessness or ignorance ... c: an unexpected happening causing loss or injury which is not due to any fault or misconduct on the part of the person injured but for which legal relief may be sought."

The definition of this widely used word is important. A vast majority of events that occur in the workplace can be traced to the fault or misconduct on the part of the person injured. Until these events are fully investigated, they are termed *events*, *injuries*, *incidents*, and, in traffic cases, *crashes* or *collisions*.

An incident in which a worker who has a drug or alcohol impairment falls from a construction site cannot be defined as an accident. The resulting investigation will determine the level of impairment and the circumstances leading to the event, but the injured worker is almost always determined to be at fault.

In 2005, CRM spent six weeks in Kazakhstan providing the equivalent of the Occupations Safety and Health Administration (OSHA) 30-hour safety in construction training course for the workers on a huge gas and oil refinery project. The workers were trained in either Russian or English because CRM had translated the entire program to Russian.

Although many of the workers who attended the course appreciated the importance of safety in the workplace, it seemed that the sole goal of the

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entity that sponsored the training was the certificate. Great emphasis was placed on the number of workers who could pass through the doors of the classroom and carry away with them a certificate of attendance. This goal became quite evident when our training staff toured the project as the training mission ended.

The seriousness of the safety infractions on this huge site were alarming, and when these were pointed out to the Health, Safety, and Environmental managers of the sponsoring company, we were met with objections, denials, and comments such as, "that is not your business." This kind of safety culture in management may not be the ideas of the owner or of Kazakhstan's government, but it appeared to be the culture of the lead contractor. This is the type of culture that creates unmanaged and uncontrolled risks in construction.

Plan

All corporations need one CEO and one risk manager

One individual can make the difference in managing the risks of construction within a corporate culture. The CEO is the one who has this ultimate authority.

With the full support and dedication of the CEO, a second experienced, educated, and knowledgeable individual can prepare plans to manage the risks of construction and other business operations.

A plan is the first element of an effective risk-management program. All management must have the same commitment and dedication as the CEO, either by choice or by direction. Management then ensures that all employees, contractors, subcontractors, vendors, and visitors are fully apprised of and directed to comply with the plan.

This approach is one of the most effective means of managing the risks associated with construction. In fact, this approach can be employed to manage the risks associated with any business or industry.

Prevent

A small investment leads to a huge return

Prevention is the second element of an effective risk-management program. Prevention includes the detailed review of plans, specifications, and contracts.

Obtaining effective construction counsel is essential. Not many attorneys are construction savvy; locating an attorney who is experienced, educated, and knowledgeable in construction is not easy. This task should be managed by the same individual who prepared the risk-management plan because that individual will be interacting with the selected legal counsel. It is the same principle that applies to every business sector.

Prevention also includes:

- hiring, training, and educating new employees
- retraining seasoned employees
- managing equipment
- coordinating risk-management functions with field management
- monitoring activities for compliance

> Monitoring for compliance with the previous prevention plan cannot be overemphasized.

Control

Early intervention is solid protection

The more successful the planning and prevention activities, the more unlikely it is that there will be an event.

This is the area of risk management that requires the most care in minimizing costs. Certainly the historical culture of the company regarding safety and other elements of risk management will play a significant role in an event.

The response to the event—the control of the event—will be even more critical. Control is the third element of an effective risk-management program.

Many terms have been used to describe this element: crisis management, disaster management, emergency response. I encourage control of an event rather than allowing the event to escalate into a crisis, disaster, or emergency.

The following occur during the control segment:

- site management
- scene control
- data collection
- investigation

The risk manager and a construction-savvy attorney should head the control team. Factual data collection and preservation of all evidentiary components are essential. Photographs, detailed surveys, factual witness statements, and historical elements preceding the event are among the crucial materials to secure.

In scenarios that include claims of events that did not occur, the control element of the risk-management pro-

gram is invaluable. All events and all claims of events must be subjected to this control element.

A recent court case in Illinois involved a Chicago-area ironworker who claimed that he was knocked off a truck while unloading precast concrete panels. During the pursuit of the ironworker's injury case, the records of the concrete supplier and the general contractor contradicted the ironworker's claimed circumstances of this event. While a good control process did not occur for this claimed event, the data available, the photographs, the delivery tickets, and a few other key factors resulted in a jury verdict against this worker. The cost of defending this case would have been significantly decreased had a detailed control investigation been completed immediately following the report of the claimed event.

The control element of the risk-management program involves the most outside entities:

- attorneys
- insurers
- law enforcement officers
- state and federal regulators
- fire- and emergency-management individuals
- service agencies

This is where the insurer or insurers are likely to wish to control the case. You most certainly will hear that "it is cheaper to settle than to fight through the risk of a trial." This scenario proves to be good in the short term for the insurer, good for the attorney representing the claimant, partially good for the claimant, and almost always bad for you. History shows that as more cases settle, more cases are filed against those who habitually settle. The results of a controlled investigation should be the key factor in determining whether a claim settles or is tried. Your insurer should be a member of your risk-management team, an investor, and an advisor. The insurer should not take over the decision-making regarding your events without your input and participation.

About the author

Timothy G. Galarnyk is CEO of Construction Risk Management Inc. CRM would like to introduce *PCI Journal* readers to additional topics of interest in the areas of design, manufacture, delivery, and erection of precast concrete. Questions regarding contracts, subcontracts, indemnification, and legal aspects of this industry will be directed to a qualified, construction-savvy attorney.

Synopsis

One individual can make the difference in a corporate culture when it comes to managing the risks of construction, and a plan is the first element of an effective risk-management program.

Prevention is the second element of an effective risk-management program. Prevention includes the detailed review of plans, specifications, and contracts. Prevention also includes hiring, training, and educating new employees; retraining seasoned employees; managing equipment; coordinating risk-management functions with field management; and monitoring activities for compliance.

Control, in the form of crisis management, disaster management, or emergency response, is the third element of an effective risk-management program.

Keywords

Accident, incident, management, owners, plants, risk, safety.

Reader comments

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