

# Risk Management

## Oh, @#\$\$%! We're being sued

### Understanding the civil litigation process

**Y**ou may be shocked, worried and angry whenever you are involved in a lawsuit against your company. Pay these emotions no mind, for handling and understanding any lawsuit requires only the same calm, patient, "can-do" attitude that you apply every day in running your equipment rental business.

#### ■ The lawyer letter or legal papers.

When you are sued, you are served with formal legal papers or you might receive a representation letter from a lawyer.

Someone is claiming that they were injured and that your company is responsible. Take a breath and then call your insurance company to advise them you have received such papers. An insurance company, such as ARA Insurance Services, will immediately assign a lawyer for you. Provide

your defense attorney with what you know and what you don't. The two of you will then file an answer to the claim raised.

#### ■ Investigation and written discovery.

Your defense attorney will need to investigate the claim. The attorney may wish to meet with you, visit your business location, inspect the rental equipment involved and meet with your employees. The lawyer for the other side will want to know the details about your business and what happened before the incident. The opposing lawyer will request information and documents from you. This is called "written discovery." The requests may seem arduous, annoying or just plain crazy. You and your lawyer will work on responses to these inquiries together.

■ **The deposition.** Your defense lawyer will likely tell you that the other side wants depositions from you and your employees. A deposition is a question-and-answer session with a court reporter and the opposition's lawyer asking the questions. Your defense lawyer will be seated next to you. Ahead of time, your lawyer will prepare you for the questions that are likely to be asked. If your employees have been requested, understand that they may be nervous and worried. Help them understand that the deposition is a chance to share what they know to represent and defend the company.

#### ■ Experts and inspections.

A claim will

usually involve an injury on some piece of your rental equipment. The equipment will likely need to be inspected and perhaps even tested. This may require safe-keeping the equipment before and after the inspection, which means the equipment in question is not available for rent until after the lawsuit is concluded. You will need to provide all litigants with the history of the equipment's inspection, maintenance, repair and rental history. Good record-keeping practices are very helpful in defending your company.

■ **Settlement or trial.** Once discovery is over, there will be lawyer conferences with the court, the filing of motions on legal issues and behind-the-scenes action. The lawyers are sizing up the claim, your performance at deposition, the documents regarding your rental equipment and the severity of the injuries to the claimant to determine if the case can or should settle. Your defense lawyer may tell you the burden is done and over,

which means settled. If the case does settle, it is no indication that you are "guilty." It means the insurance company has made a business decision that it is better for all concerned to resolve this dispute and move on. Otherwise, your lawyer will tell you that a trial date has been set. You should review the trial dates and inform your defense lawyer if there are any bad days that would conflict with your business schedule, vacations or the availability of employees.

■ **The trial.** A trial is an opportunity for both sides to present their actual evidence. This is your chance to defend your company, employees and actions. You or a company representative may be asked to sit at the defense table at trial. There will be a jury of eight or maybe 12 citizens from your local community. There will be opening statements, live testimony of various fact witnesses, expert testimony and the introduction of documents and other physical evidence. You and your employees may be asked to testify again. A trial can take one or more weeks depending on the severity of the claim.

■ **The verdict.** You can't win them all, but with preparation and smart business practices before an accident happens, chances are that you will. Think about what you learned during the long and often frustrating process that is a civil lawsuit and work to make any lawsuit your last. **RM**

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