

## Workshop W8

*Wednesday, October 31, 1:30–3:00 p.m. and 3:30–5:00 p.m.*

# **ACCIDENT INVESTIGATION STRATEGIES**

Presented by



**Frank Keres**  
**President**  
**Construction Risk Associates, Inc.**

How an accident is handled can make or break a contractor's risk management program. Many contractors rely on safety managers and site superintendents to investigate an accident and outsiders such as claims adjusters and insurance company attorneys to resolve any corresponding claims. In this workshop, find out why contractors should be actively involved in the investigation of accidents and hear practical suggestions for performing this task.

- Examines the need to preplan an investigation, from whom to involve to what questions to ask.
- Provides step-by-step procedures for conducting a thorough investigation, including collection and documentation of evidence.
- Outlines the types of information that should be collected and retained in the event the accident turns into a claim.



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**Frank Keres**  
**President**  
**Construction Risk Associates, Inc.**

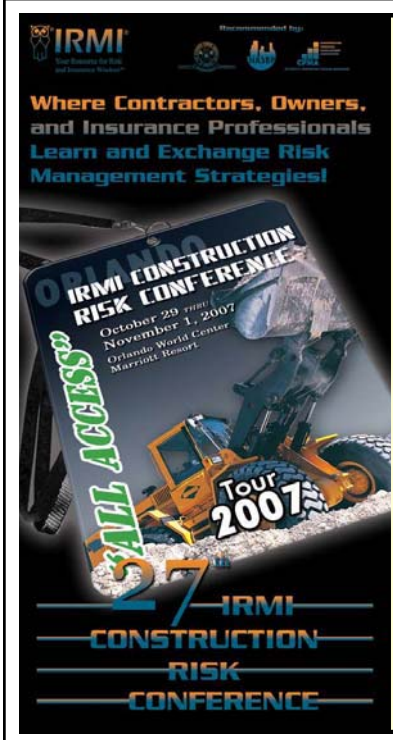
Mr. Keres is presenting Workshop W8, "Accident Investigation Strategies," on Wednesday afternoon. He is principal of Construction Risk Associates, Inc., with a main office near Chicago. He works with contractors and brokers, insurers, and owners who deal with contractors. He works on specific assignments, general consulting, and the majority of his work is as an outsourced risk manager. Before forming Construction Risk Associates, Mr. Keres was risk manager for Safeway Services, one of the nation's largest subcontractors with more than 70 locations. Mr. Keres had also worked within Aon Risk Service's Construction Group, working with contractors on developing risk programs and with owners of larger construction projects. He was one of the earliest construction risk managers when he worked for James McHugh Construction Co. in Chicago.

Mr. Keres believes in the full integration of insurance, claims management, loss control, and operations to have a comprehensive and productive risk management program. He utilizes his legal training and background, a thorough knowledge of coverage, a realistic approach to claims, and his safety experiences to provide a unique focus to risk management. Mr. Keres is well recognized as a leader in the area of construction risk. Among the groups to whom he has made presentations are the National Safety Council, International Conference on Construction Safety and Health, National Inland Marine Underwriter's, Construction Safety Conference.

Mr. Keres holds a B.A. from the University of Notre Dame and a J.D. from John Marshall Law School.

## ***Notes***

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# ACCIDENT INVESTIGATION STRATEGIES

Presented By:  
**FRANK KERES**  
**CONSTRUCTION RISK ASSOCIATES, INC.**  
**NORTHBROOK, ILLINOIS**

## Why Do an Investigation?



- CURIOSITY: We all want to know WHY**
- PREVENTION: So it will not happen again**
- FINANCIAL:**
  - Your money to pay the claim**
  - Insurance premiums can go up**
  - Litigation could ensue**
  - Unfavorable “press”**

## Why Should the Contractor Investigate?



In reality, the contractor is the **BEST** one to investigate:

- More control (“you’ve got the power”)
- More knowledge
  - of its people and operations
  - of their interests in the accident

**The contractor is the entity that wants to know why, to use the knowledge to prevent future accidents, AND that has the financial interest.**

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## Why Not “Others”?



- **Insurance companies send “adjusters” not investigators. Their job is to “adjust.”**
- **No one knows the contractor like the contractor itself**
- **The contractor knows its interests best and THEREFORE should control the investigation to protect its interests**
- **In reality, it is the most cost-effective way to investigate.**

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## If you are not the contractor



- **Brokers and carriers can use this to work with their contractor client.**
- **You can do these things WITH your contractor client.**
- **You can work with your contractor client on all the things mentioned here.**
- **Share what you learn with your contractor to assist them.**
- **Many times the contractor needs to have its broker and carrier to explain and implement.**

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## What Accidents Do You Investigate?



**Every accident should have some type of investigation.**

**-Work comp? You should investigate for work-related facts, any possible defenses such as employee violations of safety rules, substances, etc. Also, to prevent future**

**-Auto accidents: YES!!!**

**-Any potential liability claim**

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## **Columbo: “Godfather” of Investigation**



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## **Root Cause Analysis**



- It is what it says: find the root cause**
- Much written, much confusion**
  - Different definitions (90,000 “hits”)**
  - Different methods**
  - Different reasons**

**THUS: It is what YOU make it.**  
**(Don't be afraid to develop your own way.)**

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## What we won't discuss



- MOST theories of root cause are twofold:**
  - the actual occurrence**
  - the systems or corporate “culture” allowed it to happen**

**We will not address the latter: It clouds the investigations and is contrary to the methodology. SAVE IT FOR LATER.**

## What this is not



**Many accident investigation “sessions” talk about collecting documents, meeting minutes, contracts, etc. That IS important but that does not get you to the cause. Those are more claims handling materials.**

**We are going to focus just on the cause of the accident.**

## Investigation Mindset



- DON'T HAVE A MINDSET**
- FORGET WHAT YOU KNOW, HEAR, THINK**
- FREE YOUR MIND**
- BE COLUMBO**
- PRECONCEPTION IS MISCONCEPTION**

**“Brainstorm to ensure that all possible causes are included, NOT just those that you are sure are involved.”**

**(NASA 2003 Root Cause Analysis Overview)**

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## What NOT To Do



- ASSUME:** just because you “have been around the block” does NOT apply to THIS accident. You are not that smart. **ASSUMING BLOCKS THE BRAIN**
- LISTEN TO OTHERS:** you are smarter than they are. Even an eyewitness is limited by time, location, and his opinion
- LOOK FOR FAULT:** Fault is subjective and for lawyers. Don't look for what went wrong, just look for what happened.
- SHIFT BLAME:** Do not look for someone else to be causal. **IT VERY WELL COULD BE YOUR OWN COMPANY.**

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## WHAT YOUR ARE NOT



- You are not the safety person; you are an investigator. Forget OSHA, most accidents are not OSHA violations.
- You are not responsible. You were not there.
- You are not a lawyer.
- You are not a know-it-all.
- You are not anybody's friend.
- You are not stupid.
- You are **NOT AFRAID TO OPEN YOUR MIND.**

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## The Three "C"s Necessary



- CONTROL:** All information comes to YOU. You have to the authority to do whatever and to tell others what to do.
- COOPERATION:** You might have to delegate some actions and duties. You will have to interact with others, such as insurance reps and lawyers.
- COMMUNICATION:** Those you control and cooperate with must be able to communicate with you and to implement your requests.

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## **Pre-establish the 3 “C”s**



**-Unless you are the main person, the big cheese, the head honcho, AND everyone knows this THEN**

**PUT TOGETHER A WRITTEN POLICY ON ACCIDENT INVESTIGATION, NOT JUST REPORTING AN ACCIDENT.**

**Most companies have a written reporting procedure but not investigation.**

**ESTABLISH the 3 “C”s for YOUR company.**

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## **MAKE SURE IT'S SAFE**



**BEFORE YOU OR ANYONE ELSE BEGINS TO INVESTIGATE AN ACCIDENT, MAKE SURE THE SITE IS SAFE!!!!**

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## First Steps



- Typically, you are not at the site, so assume control from wherever you are:**
- Select the one person at the site to take control until you get there**
  - All employees who are witnesses to be taken off-site. Separate the witnesses.**
  - Leave everything the way it is. No one should move or touch anything.**

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## At the Site



- Select one person on-site to relay communications through main office, outside sources, etc. In other words, to man the phone**
- Select one person, usually the key on-site rep, to be with you and do whatever you ask. Tell them to listen; you do not care what this person thinks or heard from others.**
- Have a camera (video is good, too) and paper.**

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## How To Find the Root Cause



- OBSERVE**
- ASK ONE QUESTION**
- GET ONE ANSWER**
- ELIMINATE YOUR QUESTIONS**

**THAT'S ALL THERE IS TO IT!!!**

**SOUNDS SIMPLE, BUT IT REQUIRES PATIENCE AND OBJECTIVITY (and no mindset).**

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## OBSERVATION



- Start with a WIDE perspective**

**Look from outside the site, encompass the whole scene. See where the site is. Be a WIDE ANGLE LENS. Get this perspective first. This will provide a framework. AND, remember who knows what you might see.**

**You might have questions such as what is that crane, what is the stage of the project, what is above the location. Write your questions down. Don't ask anyone. Let your senses tell you the answers.**

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## Approaching the Accident Location



**CONTINUE OBSERVING** as you get to the actual site of the occurrence. Note where things are, what is on the ground, what is above. **ABSORB.** Determine access points, look for things out of place, little things can count.

**For example:** a hammer on the ground when the accident was above. Whose is it? Could it have been the injured persons?

**WRITE DOWN YOUR QUESTIONS.**

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## Observation Continued



**-Observe EVERYTHING. Look closely. Work your way to the accident location. When you are there, look again like a wide-angle lens. Look at the whole floor or area, what is there.**

**- At the actual location, observer further and further, focusing. Where did the person “start” and where did he end up?**

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## Observation Hints



- In many cases, things were moved. From looking at dragging marks, clean areas where materials were moved, you can envision what it was like before the accident. Material on top was at the bottom.
- Look for personal items: tools, harness, lunch box.
- Is equipment still running? What equipment was there? What is its condition?
- Look at other trades. What were they doing?
- Whatever you see should be photographed.

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## ASK QUESTIONS: The Most Difficult Aspect



- As you observe, **ASK YOURSELF QUESTIONS.**  
Question the things you are seeing, the objective, simple questions:
- How did that get there?
  - Why is that in that condition?
  - Why is that in that position?
  - If it involves a person: where did he fall, where was he before, how did he get there?
  - Why is that there and why is he there?
  - If this is here and that is there, why?
- QUESTION EVERYTHING YOU SEE.**

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## **ANSWERS**



**IF YOUR MIND IS OPEN AND YOU ARE OBSERVING EVERYTHING, YOU WILL HAVE QUESTIONS:**

**ONLY ANSWER THE QUESTIONS THAT THE OBSERVED FACTS SUPPORT.**

**YOU WILL STILL HAVE QUESTIONS WITH NO ANSWERS**

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## **The Unanswered Questions**



**Go back, observe (or look at your pictures) and answer the questions.**

**Go back to where you started and begin again.**

**DOING IT TWICE IS NICE!**

**Do it again, you might find something as you do.**

**Doing it again will answer most of the unanswered questions. (Trust me.)**

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## **More on Unanswered Questions**



**If you end up with unanswered questions, then write them down. THEN, put down ONLY those possible answers that THE FACTS SUPPORT.**

**You CAN go back and find FACTUAL support for those alternative possible answers.**

**But in the end, IT IS OKAY TO HAVE UNANSWERED QUESTIONS.**

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## **You do have some knowledge**



**-You do have some OBJECTIVE knowledge based on education and experiences. You cannot apply those but DO NOT SUPPOSE that if it should have happened that it did.**

**-BUT you can apply science. Examples are the parabolic arch of falling items, the weather conditions, etc. FACTS OF LIFE.**

**You have realistic knowledge: A cable at the site should not have a new splice, side brackets on a scaffold can not support heavy loads, certain combinations of materials can cause fumes, etc.**

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## Your Knowledge: A Caveat



**-Use your objective knowledge to answer remaining questions. Be a scientist or engineer. NEVER apply the thought process that uses the concepts of:**

- NORMALLY this would happen.**
- This is SUPPOSED to happen.**
- TYPICALLY this should occur.**

**ONLY APPLY THE PROVEN RULES THAT ARE FACTUALLY SUPPORTED.**

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## More on what you know



**One downfall with typical root cause practices is that they are based on what you see.**

**-WHAT DON'T YOU SEE?**

**Here is when you can carefully use your knowledge.**

**For example, if he fell, where is the harness?**

**What if you happened to be at the site before and a shaft was covered. After the accident it is not there, where is it? Find it.**

**Use your knowledge of construction strictly.**

**YOUR KNOWLEDGE MUST BE OF FACTS, NOT "SHOULD HAVE BEEN."**

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## **Evidence**



**You should have the root cause or have only a limited number of possibilities.**

**YOU collect any materials, items, etc., and put them in a secure place, labeled with your name and mark them “Do not touch without (your name)’s authority.”**

**Secure areas for further investigation. Consider a forensic photographer.**

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## **Statements**



**Okay, let’s be realistic. You have heard what employees, people, witnesses have said. (WHICH YOU IGNORED WHILE YOU DID YOUR INVESTIGATION.)**

**You can now take statements.**

**You should know by now if you’re in “trouble.” Consider having an attorney take the statement. (And maybe collect some evidence?)**

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## Some Hints on Statement



- Before taking the statement, go over with the employee where he was at the time of the incident, before it, and after also.**
- If he is an eyewitness, have him tell you exactly and only what he saw.
  - Do not forget what they heard. Often overlook and is very objective.
  - Get the timing correct.
  - Prepare the statement and have them sign. You date and witness.
  - Tell the witness to talk to no one about this until you tell him.

## Are you done?



- You might have some unanswered questions.**
- Go to **FACTUAL** documents: was employee on prescriptions? (Check with union benefits.) Was he late for work? Did someone else investigate and get some evidence you do not know about?
  - Don't forget the doctor's reports, bruises, marks, etc. These are physical facts.

## **Root Cause**



**You should now have what facts were causal to the accident. Take these facts and any evidence into your possession.**

**You may want to give originals and evidence to counsel to hold.**

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## **Some Caveats and Actions**



**Be careful of forms for investigations.  
These can stop you from using your brain.  
They can hurt you in a lawsuit.**

**PRACTICE DOING ACCIDENT INVESTIGATIONS. SERIOUSLY, THIS IS A GREAT IDEA AND A WAY TO DEVELOP YOUR SKILLS.**

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## ACCIDENT/INCIDENT REPORT

\*\*\***IMPORTANT**\*\*\* All blanks must be complete - use n/a if not applicable.

Employee Name:		Date of Incident:	
Employer (if not Safway):			
Time of Occurrence: <input type="checkbox"/> AM <input type="checkbox"/> PM		Occupation:	
Project/Site:		Hire Date:	Time on Present Job:
Jobsite Name:		Jobsite Address:	
Description How Injury or Property Damage Occurred:			
Police Report? <input type="checkbox"/> No <input type="checkbox"/> Yes If yes, Police report #?		Were photos taken? <input type="checkbox"/> No <input type="checkbox"/> Yes If yes, send photos.	
Company Vehicle Involved? <input type="checkbox"/> No <input type="checkbox"/> Yes		Vehicle #	Make & Year
Describe type of Injury/Property Damage:			
Witness		Employer	
What task was person performing			
What Equipment was involved ?			
Do we have items in our possession? <input type="checkbox"/> No <input type="checkbox"/> Yes		Who was Foreman/Supervisor?	

- ✓ If Incident took place at a jobsite, send copy of contract(s), P.O.'s, etc., within 24 hours.
- ✓ Send names, phone numbers of anyone else (client, owner etc.) who made a report or did an investigation.

**Has Carrier/TPA been Notified?**    No    Yes →    *If Yes: Date & Time?*

**Medical Treatment?**

No    Yes

**Light Duty?**

No    Yes

**Lost Time?**

No    Yes

Investigating Supervisor:	Date:
Site Manager	Date:

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