

Summary - Insurance and Blasting

Governance of the insurance industry in BC

Insurance brokers and adjusters are subject to a code of ethics and are independently licensed. The Insurance Council of BC is governed by a council of industry and public representatives appointed under the *Financial Institutions Act* and given the overall responsibility for carrying out the Insurance Council's mandate and overseeing its operations. The Insurance Council of British Columbia licences and regulates insurance agencies, agents (brokers), salespersons or adjusters. The BC Financial Services Authority ("BCFSA") is a Crown agency of the Government of British Columbia and is responsible for regulating insurance companies operating in British Columbia.

Consultation with insurance industry

In response to Council's request to further consult with the insurance industry about how claims from blasting damage are handled, the consultant met with qualified leaders from the Board of Directors of the Insurance Council of British Columbia. The purpose of the meeting was two-fold:

- to gather feedback on insurance-related information collected over the course of researching best practice for local government regulation of blasting activity, and
- to collect information that would assist in responding to resident enquiries and concerns about how to deal with insurance when nearby blasting activity damages their property.

A board representative from The Western Canada Chapter of the International Society of Explosive Engineers (ISEE), a non-profit organization that represents the blasting industry in Western Canada, participated in the meeting to clarify blasting terminology as it relates to insurance and distinguish aspects of the process that differ between the blaster and insurer as it relates to a local blasting bylaw.

Insurance policies during construction activities in urban neighbourhoods

There are four insurance policies at play during redevelopment in urban neighbourhoods:

1. Policy of the property owner who is developing their site.
2. Policy of the contractors who are doing the work, including blasting.
3. Policy of the municipality related to local government activity and operations.
4. Policy of any property owner who may experience damage to their property and seek an investigation and remedy for damage on their property.

Coverage for property damage arising from the use of explosives for blasting is typically excluded in a property policy and more often forms part of a stand-alone construction policy. This form of coverage protects against losses caused by a contractor using explosives for blasting. Any liability issues from the use of explosives would be covered in a wrap-up liability

policy. Residential property owners rarely use wrap-up policies for their construction projects and rely on their blasting contractor to provide the specific insurance.

Liability insurance as a blasting permit requirement

Oak Bay requires blasting permit applicants to submit evidence of general commercial liability insurance as a condition of permit issuance to ensure that the blaster's insurance is current and in force and effect during the time of the permitted blast. This general commercial liability insurance is not property insurance as a residential homeowner would purchase.

Liability insurance in action: examples

Liability is a legal process in the insurance industry. It is fact driven and highly transparent from the adjuster's perspective. Liability is based on the individual circumstances of each case. For this reason, any scenario about what an investigation yields would be highly speculative. Each allegation is fact-specific in its unique context and circumstances, and each claim is dynamic. The interviewees provided to recent Oak Bay examples that offer a glimpse into how insurance works respecting claims of damage due to blasting:

1. The homeowner involved their BCAA home insurer who subrogated to the blaster's insurer. The mechanism of damage was deemed to be caused by the blasting as confirmed by the adjuster and the blaster's insurance covered the cost of the damage. Mechanisms of damage from blasting include a flying object or vibration. In this case, rocks were moved onto a nearby property as a result of blasting.
2. Cracks in driveways is a common claim experienced by the blaster and investigated by the adjuster. In this case, it is not typically adequate to factually determine a causal relationship between blasting activity and incremental damage such as may be suggested by a driveway that shows 9 cracks in a pre-blast survey but then has a 10th crack (or slightly bigger cracks) in a post-blast survey. The cause cannot be clearly determined as unrelated to seasonal temperature variations and/or an underlying construction fault already apparent in the driveway's construction. Without rationale for a causal relationship upon investigation by the adjuster, the blaster's insurance cannot cover the driveway crack. However, the homeowner can make a claim to their own insurer, have the damage investigated, and the homeowner's insurer will deal with the blaster's insurer to address the liability.

The second example illustrates the roles of the blaster's insurer and adjuster and the homeowner's insurance and adjuster, distinguishing roles. The homeowner has their own first party insurance, that engages an adjuster upon a damage claim. If damage is deemed to be due to blasting, the first party insurer (the homeowner's) reaches out to the third party insurer (the contractor's or blaster's).

The interviewees have never experienced a homeowner whose insurer refused or charged to inspect damage done to the insured property (the homeowner's property). However,

interviewees acknowledged that property owners may be hesitant to engage their insurers in case the damage is proved unrelated to the blasting but may instigate required repairs to the home or a claim unrelated to blasting that affects future premiums.

Who to call when your property has been damaged

What happens when you believe you have sustained property damage from nearby blasting?

1. Notify the first party insurer. This is the homeowner's insurer. Call your own insurer to investigate the damage. It is a logical, rational, and reasonable option to engage one's own home insurer about damage to one's property. The insurer has an obligation to investigate damage claimed by the insured homeowner. They will subrogate the claim when warranted.
2. Notify the third parties suspected to have caused the damage. They may include one or more of the following:
 - a. General contractor
 - b. Blasting contractor
 - c. Excavation contractor
 - d. Road builder
 - e. Municipality (in the event of public works)
3. Is there liability or property damage caused to others? This is the question to be asked and answered by the first party insurer and each relevant third party insurer. Yes or no. Should the damage be caused by an external action like blasting, then it is the blaster's insurance that is subject of the claim. The investigation must include the blaster's insurance adjuster and, if the damage is caused by the blasting, the blaster's insurance would cover the damage. If the damage is a result of factors other than blasting, then the blaster's insurance would not cover the damage, and the homeowner would rely on further discussions with their own insurer about the cause, repair, and insurability of the damage.

Data collected and shared respecting blasting

In addition to WorkSafeBC regulations, blasting companies must also comply with the requirements of their insurance companies. Insurance companies have requirements for blasting notification, pre-blast surveys and intensities of allowable blasts. The blaster's insurer may require that the blaster retain an independent insurance adjuster to complete a pre-blast survey. The survey itemises the condition of each surveyed structure before detonation, supported by photos. Some local governments also require the blaster to retain an independent adjuster, at the permit holder's costs, to complete a pre blast survey.

A vast amount of data is collected for each blasting project and distribution of all datasets is often unreasonable. The pre-blast survey is only one of six or seven data points, like seismic records, that an insurance adjuster will use to create the complete picture of blasting activity, establishing the facts using data-driven methodology. The format and instruction for sharing data rests with the contractor who owns the information collected about the blasting work. The

insurance company cannot disclose the contractor's information. Best practice in the blasting industry is to release specific photography and data that is related to a specific claim. Interviewees suggest a clause in the municipal blasting bylaw could help clarify this situation, as follows:

If a homeowner makes a claim for damage related to blasting, relevant data and images shall be released by the contractor to the claimant in an accessible format and with instructions for sharing the data.

Conclusion

If the damage to property is causal, it is most likely covered by third party liability insurance. If homeowners are sceptical of the process and systems in place, they may wish to undertake their own pre-blast inspections. They could engage their home inspector or one offering services directly related to blasting.

Reference: The information included in this summary was collected from insurance industry sources in addition to an interview (October 23, 2024) with members of the Board of Directors of the Insurance Council of British Columbia and The Western Canada Chapter of the International Society of Explosive Engineers (ISEE), a non-profit organization that represents the blasting industry in Western Canada