

Tragedy in Beirut – Potential Compensation Sources

The tragic and catastrophic explosion that occurred in Beirut yesterday, beyond the immediate health and safety concerns, raises important and potentially time-sensitive considerations involving obtaining compensation for property damage sustained due to the blast.

While all are most appropriately concerned with the loss of life and serious injuries inflicted upon the population, the extent of property damage to the central Beirut area is comparable to that incurred during the dark days of the Lebanese Civil War of the last century, and cannot be understated. This article addresses some of the insurance and other liability considerations that all should be aware of so that they be in a position to recover for their losses.

Insurance Considerations – You May Have Coverage for Damage

Firstly, anyone who sustained physical damage to their homes, businesses, or other property may have a valid claim under the terms of their first-party premises coverage, that being a homeowners policy, or in the case of businesses, their commercial Property All Risk (PAR) insurance policy, both of which cover damage resulting from various occurrences. Similarly, motor vehicles will have comprehensive coverage, if coverage was purchased, which covers the vehicle for such loss or damage.

Most such first-party premises insurance policies specifically cover damage resulting from an explosion; however, it is important to review the terms of the policies to make sure this occurrence is covered. Such insurance policies may take the form of “all-peril” policies, meaning that most occurrences are generally covered, unless specifically excluded, or “named-peril” policies which cover only specifically designated risks. Having said this, most “named-peril” policies do list ‘explosion’ as a covered risk.

A significant concern when seeking coverage is whether the insurer will look to the various policy coverage exclusions which would allow them to avoid paying the claim. Those common exclusions which come immediately to mind given the circumstances of the explosion as well as recent Lebanese history, are the exclusions for damage caused by war, terrorism, or insurrection.

At this time, there has been no conclusive cause of the explosion; however, based upon statements issued by the Lebanese government, it appears to have been caused by an accidental detonation of a 2,750-ton cache of ammonium nitrate which had been confiscated by the government some years ago, and then stored in a warehouse located at the Port of Beirut. Thus, on its face, and at this early juncture, it does not appear that any of the most likely policy exclusions cited above may be utilized to deny coverage.

Also beware that most first party policies have relatively short deadlines requiring submission of at least notice of a claim to the insurer. Thus, consideration should be made to quickly document the damage (and make repairs on an emergency basis only, as the insurer will insist on an inspection of the damage) and report such to your insurer immediately.

Businesses that are disrupted may also have business interruption coverage, allowing them to make claim for losses incurred as a result of an inability to operate due to damages caused by a covered peril, in this case the damage caused by the explosion. This should not be overlooked and any business with this coverage should review their policy to verify if they have this coverage, and then consider making such a claim to their insurer or broker.

No Insurance? – Who to Sue

It is an unfortunate truth that most losses are uninsured or are underinsured. In such circumstances, those who have uninsured losses may consider commencing legal action against the party or parties responsible for causing the loss.

Here, it is not clear who may bear legal liability for causing the explosion, and this will be subject of frenzied speculation, investigation, and litigation over the coming months and years. However, there are several possible responsible entities that immediately come to mind.

Firstly, is the government of Lebanon, as well as its responsible subdivisions, such as that administering the Port of Beirut. Given the volatility of ammonium nitrate, a substance commonly utilized for bomb manufacturing and with an explosive power potentially equal to 40% of that of dynamite, it is a pertinent question as to why such a large quantity of this material was allowed to be stored for so long in a dense urban area. The first entity likely responsible for this is the government itself, which presumably made the determination to seize and store the cache.

Secondly is any entity that has subcontracted with the government to store or otherwise secure the ammonium nitrate. This may implicate various businesses, such as port and warehouse operators, storage companies, and security providers who were responsible for the conditions at the storage facility.

In this respect, it should be noted that the non-governmental entities that may be responsible likely have liability insurance which would cover their legal responsibility; however, such policies undoubtedly have coverage limits - that being the total amount that the insurance company is obligated to pay for the occurrence - which will be wholly insufficient to cover the totality of claims arising from the city-wide devastation caused by the explosion.

This being the probable case, where private liability insurance is entirely insufficient to cover that damages and the responsible private companies will be bankrupted by the immense uninsured liabilities, it is a certainty that claimants will look to the deepest pocketed potential liable party, that again being the government. However, given the government's current struggles in funding its current operations and delivering basic services, its ability to pay any judgment in the future is a questionable proposition.

The inherently dangerous nature of ammonium nitrate cannot be understated. Such was utilized to craft the bomb utilized in a terrorist attack in Oklahoma, USA in 1995 upon a federal facility in which the death toll was over 100, including many children in a daycare center located at the facility. In 1947, a ship loaded with this substance exploded in Texas City, killing over 500 persons. There have been other notorious ammonium nitrate explosions over the years, both deliberate and accidental, and all who handle this material are on notice of its dangerous propensities and are thus charged with exercising the appropriate duty of care to minimize if not eliminate the obvious risk.

In fact, the explosive power of that which may have exploded in Beirut can be roughly approximated to a detonation with a force of over 5% of that of the Hiroshima Atomic Bomb. Whoever is even remotely responsible for this detonation may be forced to pay a huge financial penalty by way of reparations, in addition to facing probable criminal charges.