Article 2

The Consequences of an Insurance Claim on an Excavating Contractor

Contractors that perform any type of excavating or underground services, large or small, have likely felt the sting of increased rates imposed by their Insurance Company. What makes this class of construction *that much riskier* to Insurers than others?

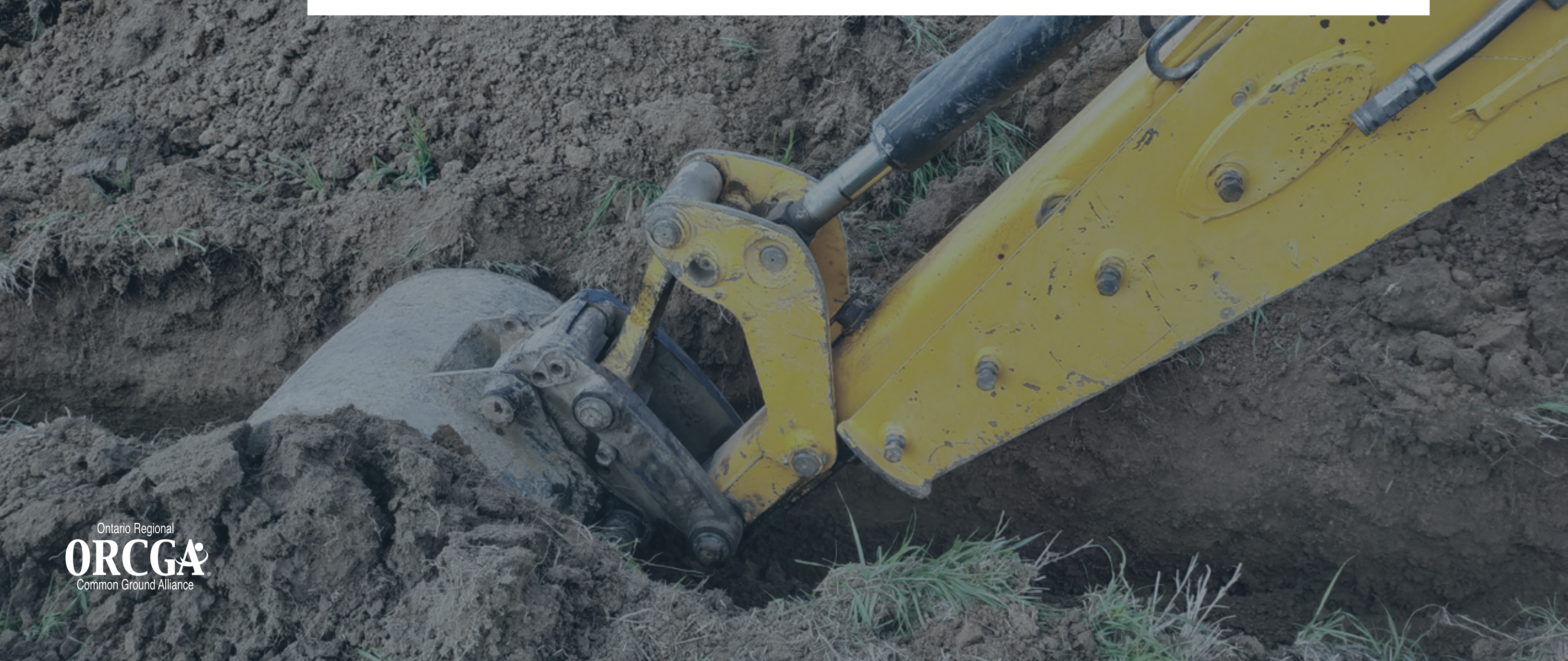
There are two major risks arising from underground and excavation work that contribute to higher risk exposures, and consequently higher insurance rates:

(1) First Party Bodily Injury and Property Damage ('BI & PD') and

(2) Third Party BI & PD.

The risk to the Insurer of First Party BI & PD is limited, since the former (i.e. injury to a worker) is attended to under provincial workers compensation acts, and the potential for the latter (i.e. damage to contractor-owned property) is typically deemed 'lower risk', except in the case of major boring and tunneling.

To the Insurer, the riskier aspect of any excavating-related work lies in liability for Third Party BI & PD. Aside from the common 'slip, trip, or fall' claim that might arise on a contractor's jobsite (the probability of which increases on urban jobsites), contractors face a host of increased third party exposures, such as injuring pedestrians, causing damage to adjacent neighbouring properties (such as sewer backup or water damage or cracked foundations), and striking utility lines (including electricity, sewer, water, gas, phone, fibre optic lines), all of which may lead to costly repairs and even more costly service interruptions to local businesses and communities.



How Does an Insurance Claim Affect such Contractors?

Take for example, a contractor, who makes an insurance claim after hitting an underground utility. This claim may cause damage to the contractor's reputation, and their rating with the municipality. It will likely cause delays that hinder the contractor's ability to meet the schedule, impacting the project profitability. The contractor will also inevitably become involved in the process of rectifying the damage, with their Insurance Company having to pay the better part of the bill.

Once the claim is settled, depending on its severity, the Insurer may have a list of recommendations for the contractor in order to minimize the probability of a similar claim arising in the future. In some cases, the insurer may deem the contractor's operations higher risk then originally underwritten, and respond by increase the rates, or restricting coverage, or refusing to offer renewal.

Availability of Insurance for Excavating, Directional Drilling & Sewer & Watermain Contractors

After witnessing the increased frequency and severity of claims that occur within the industry, the insurance market has become wary of the potential consequences related to insuring contractors that perform these services. Some insurers have gone a step further and elected to shy away from this class of construction altogether.

When the supply of Insurance Companies offering coverage decreases, and the demand for insurance coverage from excavating contractors either remains constant (or increases, as new participants enter the industry) insurance rates are pushed up, to reflect these circumstances.

The reduced supply of Insurers offering coverage also means Insurance Companies can use this market dynamic to justify a more thorough examination of prospective clients, as well as existing ones. Typically, they will use this opportunity to probe for additional information related to the contractor's operations, as a means of providing them with a level of comfort to insure the risk.

What Do Insurance Companies Want to Know?

Given the inherent 'on-site' risks that come with excavating, insurers have attempted to underwrite and understand the causes of their claims and identify the most effective ways in which to mitigate them. Among the most cited concerns voiced by insurers relating to the underground contracting class are:

1. **Site Management:** safety around the worksites, including construction site barriers, signage, and other safety measures, such as directing the flow of traffic for both vehicles and pedestrians.
2. **Methods of Completion:** How is excavating performed? Hydro vac (preferred) or hand-digging, hard cuts, other methods.
3. **Type of Work: Retrofitting vs. New Installation** – particularly for sewer and watermain contractors, Insurance Companies surcharge work that involves retrofitting, or repairing existing infrastructure, due to their higher exposure compared to new, greenfield sites.
4. **Directional Drilling:** smaller scale boring under a roadway is distinguished from major tunnelling.
5. **Location of Work:** rural sites provide less third party exposure than those in urban areas other than first party losses, such as tool/equipment theft, which may be more susceptible.
6. **Locates:** understanding the responsibility of the locate company / municipality and contractor.
7. **Insurance experience:** 5-year loss history - history is a good indicator of the future.

8. **Experience of the Contractor:** industry reputation, number of years in business, list of previous projects completed enhances their credibility in the eyes of the underwriter.

The Recipe to Minimize the Chance of Loss:

The best way for contractors to minimize their likelihood of incurring a loss include:

1. Constructing an extensive site planning.
2. Holding pre-excavation meetings with experienced personnel and all field workers.
3. Ensuring that employees are properly trained about company rules and safety guidelines prior to commencing work.
4. Crafting and following an excavation safety plan.
5. Acquiring and maintaining valid locates prior to digging (as per legal requirements).
6. Conducting continuous site inspections to address hazards and provide necessary corrective action.
7. Using proper excavation equipment that is being regularly maintained, and using hydro-vac, or hand-digging, whenever possible.
8. Contacting the utility company immediately if contact has been made with any utility.
9. Safely storing equipment and ensuring site is closed off/protected.

Who Holds the Cards?

There is no way to absolutely remove the risk of a jobsite claim. However, the best way to get Insurance Companies best terms is to provide them with the confidence that they currently maintain systems in place to reduce the probability of incurring a loss.

The next step for contractors who have good insurance terms already is to demonstrate that, not only do they employ best practices and have lower than average losses, but they are continuously working to develop new processes to identify risks and mitigate future losses.

In the current hard insurance market environment, the Insurers hold the cards, as diluted competition and increased losses across the board has resulted in coverages becoming more limited and pricing less competitive.

Any excavating contractor seeking comprehensive insurance coverage, or more competitive rates, can put themselves in a more favourable position if they have a competent insurance partner that is effective in demonstrating their competency within the field, and prove that they share the same interests with their insurer: to minimize the risk (i.e. claims) that arise from this class of construction. "It's not about the cards you're dealt, but how you play the hand".

Petrela, Winter and Associates is a specialized insurance brokerage that has focused exclusively on providing surety bond, insurance and risk management services to the construction and development industries for over 40 years. Our singular focus on construction gives us a uniquely better understanding of the needs of contractors and enables us to deliver better solutions for our clients.