

Lawyer Insights

Riot-Related Damage, Income Losses Covered Under Most Business Owners' Policies

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By Andrea DeField, Latosha M. Ellis and Rachel E. Hudgins
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Following the deaths of George Floyd, Breonna Taylor, Ahmaud Arbery, Tony McDade and Rayshard Brooks, protests against systematic racism in general, and police brutality in particular, have swept the globe. While these protests have largely been peaceful, a small, group of individuals unaligned with the goals of these peaceful protests has used the protests as cover to incite violence, damage property and vandalize businesses.

Prior to the riots in Minneapolis, Minnesota, the costliest U.S. civil disorder occurred between April 29 and May 4, 1992, after police officers involved in the brutal beating of Rodney King were acquitted. The five days of rioting caused \$775 million in insured losses. See Insurance Information Institute, Facts + Statistics: Civil Disorders, <https://www.iii.org/fact-statistic/facts-statistics-civil-disorders> (last viewed June 18, 2020). More recently, there were approximately \$24 million in insured losses following the death of Freddie Gray, a Black American who died after suffering a spinal cord injury in police custody, which the medical examiner ruled a homicide. Insured losses are not yet available for the riots in Minneapolis, but the Property Claims Services (PCS) unit of Verisk Analytics designated the event as a catastrophe. On June 4, PCS included over 20 other states, making the civil unrest that started in Minnesota a multistate catastrophic event that is expected to exceed \$25 million in insured damages.

Fortunately for affected business owners, most have insurance that protects their pecuniary interest. “All Risks” commercial property insurance policies cover all loss arising from a fortuitous (i.e., accidental and unexpected) cause unless expressly excluded. These policies rarely exclude losses arising out of riots, civil commotion or similar acts. Instead, in many policies, riot, civil commotion, vandalism, looting during riot or civil commotion, and malicious mischief are “specified” or “covered” “causes of loss.” The practical effect of these designations is that numerous exclusions that may otherwise apply will contain exceptions for loss caused by these situations.

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For example, while damage to a business's electronic data may be excluded, the exclusion may contain an exception for damage to electronic data resulting from specified causes of loss, such as riot or civil commotion. Similarly, even where the policy contains a pollution exclusion— purportedly excluding loss, damage, cost, or expense caused by or contributed to or made worse by the release of “pollutants”—that exclusion may not apply to loss or damage caused by the use of tear gas in a riot, civil commotion or vandalism. Policyholders may also have policies or endorsements to their commercial property insurance forms that expressly include coverage for riot losses.

If a policy covers riot or civil commotion, covered losses may include property damage to the building and its contents and lost income while the building is under repair or subject to government orders affecting the business's operations (e.g., curfews limiting hours of operation) where the order is the result of property damage elsewhere. Business insurance policies may also cover costs incurred in protecting insured property from future, imminent harm or continued damage. These costs might include hiring (or increasing) security personnel, boarding up windows and doors, securing inventory in place or moving inventory and operations off-site.

Even where coverage is clear, insurers may assert certain policy defenses, like unmet waiting periods and below-deductible losses, and decline to pay claims. Where those denials are wrongful or questionable, policyholders can file suit to enforce the policy's terms.

For example, in 1973, the Michigan Court of Appeals considered coverage for a movie theater's business interruption losses resulting from a statewide curfew enacted during the 1967 Detroit Riot in *Sloan v. Phoenix of Hartford Insurance*, 207 N.W.2d 434, 437 (Mich. Ct. App. 1973). The court found coverage, explaining “here one of the perils insured against was riot. A riot ensued, the governor imposed a curfew, and all places of amusement were closed, thus preventing access to plaintiffs' place of business. Therefore plaintiffs suffered a compensable loss under the terms of the policy,” accord *Allen Park Theatre v. Michigan Millers Mutual Insurance*, 210 N.W.2d 402, 402 (Mich. Ct. App. 1973) (finding coverage for losses due to curfew under civil authority coverage where policy did not require physical damage to insured property); *Southlanes Bowl v. Lumbermen's Mutual Insurance*, 208 N.W.2d 569, 570 (Mich. Ct. App. 1973) (same).

More recently, a Florida appellate court considered coverage for a liquor store damaged during the 1980 McDuffie Riots, which followed the acquittal of five white police officers in connection with the fatal beating of Arthur McDuffie. See *Kent Insurance v. Glades Liquors*, 418 So. 2d 1101, 1102 (Fla. 3d DCA 1982). The insurer claimed that the store's damages were caused by burglary, which was excluded, not riots, which were covered. While the court's majority ruled that the burglary versus riot issue should be a jury question, Judge Natalie Baskin disagreed, saying “I fail to understand how it can be said that a theft, which occurred within an area designated by police as a riot area, does not fall within the coverage of riot insurance, especially when the riot conditions required all of the stores in the area to close and to evacuate their personnel.”

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Policyholders and their insurers may also dispute the meaning of the terms “riot” or “civil commotion,” as most policies do not define them. To fill the void, courts have developed various interpretations. For example, the Mississippi Supreme Court identified “four necessary elements” of a “riot”:

- unlawful assembly of three or more people (or lawful assembly that due to its violence and tumult becomes unlawful);
- acts of violence;
- intent to mutually assist against lawful authority where “lawful authority” is not limited to official law enforcement, but extends to those whose rights are or may be injured and who seek to protect those rights; and
- some degree of public terror (i.e., any minor public disturbance does not rise to the level of “riot”).

See *Blackledge v. Omega Insurance* 740 So. 2d 295, 299 (Miss. 1999). One California appellate court has described “riot” as “including public disturbance or tumult as an essential element.” See *North Bay School Insurance Authority v. Industrial Indemnity Co.*, 10 Cal. Rptr. 2d 88, 90 (Ct. App. 1992).

Civil commotion is likewise undefined in most property policies. At the outset, courts distinguish “civil commotion” from “riot,” since each term in an insurance policy is presumed to have its own meaning. See, e.g., *Portland School District No. 1J v. Great American Insurance*, 241 Or. App. 161, 171 (2011). Thus, while a civil commotion and a riot may be similar, courts have found the term refers to “a temporary, primarily civilian disturbance ... wherein the civil peace is disrupted by violence or acts of civil disorder.” See *Sherwin-Williams v. Insurance Company of State of Pennsylvania*, 863 F. Supp. 542, 554 (N.D. Ohio 1994), *aff'd and adopted sub nom.*, 105 F.3d 258 (6th Cir. 1997). In fact, most property policies contain no limitation on the breadth of commotion or the type of harm that it might pose to person or property.

If your business has experienced or may experience a loss because of civil unrest or riots, these losses may be covered. To minimize a coverage dispute with your insurer, contact your insurance company as soon as you experience a loss to report your claim and diligently log your interactions with your insurer and its representatives. You should also begin keeping track of these losses—and costs incurred to avoid them—immediately. Save receipts and inventory damages. If you feel your insurer wrongfully denied your claim or delayed payment, contact experienced insurance coverage counsel.

Authors' Note: The authors by no means intend to equate property damage and a lost life. Quite the opposite. One is recoverable (and insurable); the other is irreplaceable. And when death is the result of police brutality or misconduct, it is a tragedy.

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