

Identifying Insurance Coverage for Riot Damage

by Robert M. Horkovich and Carrie Maylor DiCanio

Major civil disturbances in the United States should be of concern to the business community. The recent riots in Baltimore and elsewhere damaged hundreds of businesses. But the physical property damage caused by the riots likely will be dwarfed by the loss of revenue suffered by the retailers, hotels, restaurants, convention centers and corporations based in the city.

Maryland's governor declared a state of emergency and imposed a mandatory week-long curfew that forced many businesses to close early. The Baltimore Orioles even hosted the first baseball game in history that was closed to fans after Camden Yards was shut down amid the unrest. Surrounding hotels, restaurants, bars and shops also lost revenue.

There is insurance coverage for these types of losses, however, which may be found in first-party property, business interruption, civil authority and extra expense insurance.

FIRST-PARTY PROPERTY

First-party property policies and possibly property policies of other entities (if the company is named as an additional insured) provide coverage for physical damage to a company's property caused by a covered peril. For retailers, a property policy may also cover stolen merchandise.

BUSINESS INTERRUPTION

Policyholders should look to business interruption insurance to cover loss of revenue caused by a cessation in operations or customers avoiding areas they consider unsafe. This type of loss often has a greater impact than actual physical damage to property. Business interruption and contingent business interruption coverage are designed to protect businesses from losses stemming from unavoidable interruptions in their daily operations.

Business interruption losses typically occur where the policyholder's downturn in business is due to property damage at or near the policyholder's own property. Contingent business interruption losses typically occur when the downturn is due

to property damage at a customer's or supplier's property. For example, a policyholder may have a claim for lost orders from companies in Baltimore affected by the civil unrest. There is a misconception that your business must have property damage to have a business interruption loss. That is not true.

ORDER OF CIVIL AUTHORITY

Civil authority coverage can apply even where the insured premises has not been physically damaged. It is triggered when an action or order of civil authority prohibits or restricts access to the insured premises. While this coverage still requires that a covered loss cause the direct physical loss or damage, that damage can occur away from the insured premises and the damaged property need not be owned by the policyholder. Normally the damage must occur within a certain distance of the policyholder's operations. Some insurance policies provide this coverage without a waiting period or deductible.

EXTRA EXPENSE COVERAGE

Companies that incur extra expenses to continue operations while the insured premises is being repaired or replaced may be insured under the extra expense coverage provided in most property policies. Typically, this coverage is afforded for costs incurred to reduce a covered loss of business income.

COVERAGE DEFENSES TO WATCH FOR

Insurance companies sometimes deny a claim under civil authority coverage if access to the insured premises simply was rendered more difficult or inconvenient, instead of actually being prohibited by the order. Policyholders should reject this insurance company argument because it would effectively render civil authority coverage illusory. Coverage should apply so long as the order hindered or impaired business.

Insurance companies sometimes argue that business interruption coverage is not triggered unless there is a "complete and total" cessation of business. This can be devastating when a policyholder operates numerous business activities at a location and

Fine Print

an insured peril affects only some of them. Another issue is the period during which lost income will be measured. Insurance companies typically argue that coverage is provided from the time of the executive order prohibiting or restricting access to property to the time a subsequent order is issued allowing reoccupation of the insured premises. The problem is that often a structure will not be fit for reoccupation at the time of the executive order allowing access to the property. Finally, insurance companies may argue that a policyholder's recovery should be adjusted downward because business in the city was slow after the riots. This is known as the "wider effects" of the loss. If faced with this argument, review your policy language. If there is no provision explicitly granting the insurance company the benefit of the wider effects of the loss, then the insurance company is not entitled to such benefit.

HOW POLICYHOLDERS CAN PROTECT THEMSELVES

Policyholders facing losses due to civil unrest should work diligently to identify potentially responsive insurance coverage. Keep good records to support your claim and give prompt notice

of all claims under all potentially applicable policies. Make sure to give notice to both primary and excess level policies even if the loss is not presently expected to reach a certain claim threshold that would trigger excess layers of coverage. Take note of time-sensitive provisions regarding notice, proof of loss and suit limitations that could be at issue if the insurance company ends up denying coverage. If the insurance company is dilatory in paying the loss, do not hesitate to claim losses resulting from the insurance company's delay.

The bottom line is that policyholders need to identify the coverage they already have that can be used, make a claim if the business is affected by a riot potentially covered by insurance, and then pursue that coverage aggressively. ■

Robert M. Horkovich is managing partner and shareholder in the New York office of Anderson Kill. He is a trial lawyer who has obtained more than \$5 billion in settlements and judgments for policyholders from insurance companies. **Carrie Maylor DiCanio** is an attorney in Anderson Kill's New York office. She is co-chair of the firm's women's network and concentrates her practice on insurance recovery on behalf of policyholders.