



# Insurance Coverage for Businesses Affected by Civil Unrest

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**A**s the nation mourns George Floyd and others who have died at the hands of law enforcement, thousands have mobilized to protest against police brutality, systemic racism, and societal inequity in the United States. The video footage of Floyd's death has spurred demonstrations throughout the nation and the world, reminiscent of the New York protests following Eric Garner's death, the Baltimore protests following Freddie Gray's death, and the Los Angeles riots

following the brutalization of Rodney King, among far too many other incidents. It is critically important to address these societal inequities immediately and effectively—their significance cannot be overstated.

While communities work to address these issues, corporations and other business owners should also prioritize their ability to continue operations. Those in areas impacted by civil unrest may have suffered property damage and business income loss, and should use insurance to the maximum extent to help their businesses navigate this unprecedented period.

## INSURANCE COVERAGE OPTIONS

Coverage for losses stemming from the current unrest may be found in first-party property, business interruption, civil authority, and extra expense insurance. With many states and cities at various phases of reopening after the government-ordered lockdowns, policyholders should keep in mind that there might be added complexity to business interruption coverage.

**First-Party Property:** First-party property policies, and possibly other entities' property policies (if the company is named as an additional insured), provide coverage for physical damage to a company's property caused by a covered peril. Many property insurance policies specify riot or civil commotion as a covered peril. For retailers, a property policy may also cover stolen merchandise.

Commercial crime policies also likely provide coverage for this sort of loss.

**Business Interruption:** Policyholders should look to business interruption insurance to cover loss of revenue caused by a cessation in operations, orders of civil authority or loss of business due to 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 its 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 manufacturer may have a claim for lost orders from companies in New York or other areas affected by civil unrest, or the manufacturer may have a claim for loss incurred because the company that normally supplies its materials is shut down. There is a misconception that your business must have property damage to have a business interruption loss. That is not true.

As Pamela Hans and Nicholas Maxwell have noted, business interruption coverage may be available even if a business was already subject to a mandatory closure order stemming from the



pandemic. Insurance companies will likely attempt to deny coverage on grounds that the insured property would have been closed anyway. But the language in many policies does not bear out that argument. In particular, business interruption coverage should be available if a business was poised to reopen, wholly or partially, when the protest-related interruption occurred.

**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 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.

**Attraction Property Coverage:** Many property policies provide coverage for business income loss resulting from physical loss or damage to a property that attracts business to the policyholder's property. For example, tourists going to a local monument or amusement park (the attraction property) may visit a nearby store. Often the attraction property must be within a certain distance of the insured property, but to the extent there is no such policy requirement, this coverage can be quite broad. To the extent civil unrest causes physical damage to a property that attracts business to the policyholder's property and the policyholder suffers a business income loss as a result, there is coverage for the loss.

**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.

### POSSIBLE COVERAGE DEFENSES

Insurance companies sometimes deny a claim under civil authority coverage if access to the insured premises was simply rendered more difficult or inconvenient, instead of actually being prohibited by an order. Policyholders should reject this insurance company argument because it would effectively render civil authority cover-

age illusory. Coverage should apply as long as the order hindered or impaired business.

Insurance companies may also argue that business interruption coverage is not triggered unless there is a "complete and total" cessation of business even though the policy includes no such a requirement. This can be devastating when a policyholder operates numerous business activities at a location and an insured peril affects only some of them. Policyholders should also dispute this insurance company argument.

Another issue is how to measure the period during which income is lost. 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. However, following civil unrest, a structure may not be fit for reoccupation when the order allowing access to the property is issued. Policyholders should claim coverage for the full extent of their business income loss. The policy may contain extended period of liability coverage that incepts where the period of civil authority coverage ends.

Finally, insurance companies may argue that a policyholder's recovery should be adjusted downward because business in the city was slow after the civil unrest. This is known as the "wider effects" of the loss. If faced with these arguments, 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 it is not entitled to such benefit. Insurance companies may also improperly attempt to use the impact of the COVID-19 pandemic to limit recovery, and policyholders should similarly reject such arguments.

### 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 limi-



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tations that could be at issue if the insurance company denies coverage. If the insurance company is dilatory in paying the loss, do not hesitate to claim losses resulting from the delay.

Policyholders need to identify their existing coverage that can be used, make a claim if the business is affected by civil unrest potentially covered by insurance, and then pursue that coverage aggressively. ■

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