

Protests, Riots Raise Questions of Civil Authority Coverage

For any given loss, coverage depends on the language of the particular policy provisions governing the claim at issue.

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Following the death of George Floyd in May 2020, protests and riots broke out in Minneapolis and spread to another 140 cities throughout the United States. The level of property damage inflicted during the ensuing unrest made it the costliest civil disorder in U.S. history, according to data compiled by Verisk Analytics' Property Claim Services unit. The National Guard was called in to at least 21 states and Washington, D.C.

For the first time, the Property Claims Services designated the civil unrest a multistate catastrophe. Business losses resulting from the civil unrest have well exceeded \$1 billion.

In the wake of the riots, many cities issued orders restricting access to areas affected by vandalism and looting and/or imposed curfews in anticipation of further unrest. As a result, many businesses lost income and sought coverage under their insurance policies.

Many commercial property policies provide coverage for a loss incurred while access to



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a covered location is denied by an order of civil authority, but only for a "covered peril." Therefore, if the business interruption claim does not involve direct, physical loss or damage, it will not be covered.

Some policies provide a coverage extension if an action of a civil authority (i.e., police action or government order) prohibits access to a covered business's premise.

In such a situation, coverage may be provided under the civil authority provision if three things happen: a civil authority restricts or prohibits access to a nearby property not insured under the policy; the other property sustained direct physical loss or damage caused by a covered cause of loss; and the effect of such an order totally prohibits access to the insured location.

We are seeing claims where insureds are taking



the position that orders and/or curfews issued during the riots and civil commotions prohibited access to their properties and caused business-income loss.

However, if the nearby property did not sustain direct physical loss caused by a covered cause of loss, there is no civil authority coverage. If the insured business remains open and access is merely inconvenient or diminished, there will be no coverage. Furthermore, if the order was designed to protect from the threat of future harm, it is not covered by most policies. Courts have explained that, in such cases, the direct physical loss is not the proximate cause of the civil authority orders.

For instance, in *Paradies Shops Inc. v. Hartford Fire Ins. Co.*, the court analyzed a civil authority claim arising out of a ground stop order issued after the events of Sept. 11. It held there was no coverage

under the civil authority provision because the ground stop order was issued as a result of the threat of additional terrorist acts involving the nation's airlines, and not because of existing disasters at the World Trade Center, the Pentagon or Stonycreek Township, Pennsylvania. Thus, there was no coverage for the threat of future acts.

Similarly, a Georgia court held that a hurricane evacuation order did not trigger coverage under a policy's civil authority provision because it was issued due to the threat of future injury, not because of an already existing physical loss.

Of course, the existence and scope of coverage for any given loss will depend on the language of the particular policy provisions governing the claim at issue. So if you have a claim involving the civil authority provision, take a close look at the language to determine coverage implications. **BR**