

ALERT

## Insurance Coverage for Civil Unrest

By Robert M. Horkovich, Carrie Maylor DiCanio and Stephen Wah

As the nation mourns the killing of George Floyd and others who have died in the custody of law enforcement, thousands have mobilized to protest against police brutality, systemic racism, and societal inequity in the United States. The video footage of Minneapolis Police officer Derek Chauvin, kneeling on George Floyd's neck has spurred demonstrations throughout the nation and the world, reminiscent of the New York protests that followed the death of Eric Garner, the Baltimore protests that followed the death of Freddie Gray, and the Los Angeles riots that followed the brutalization of Rodney King, among far too many other incidents. It is of utmost importance that these issues of societal inequity be addressed immediately and effectively — their significance cannot be overstated.

While state, local and federal governments work far too slowly to remedy these issues leading to seething frustration, corporations and other business owners in areas that have been impacted by civil unrest, who may have suffered property damage and business income loss, should not forget to utilize insurance to the maximum extent to ensure that their businesses survive this unprecedented period.

At a time when businesses' operations are still impacted by the COVID-19 pandemic and government shut-down orders, there is now heightened concern amongst companies as to how the civil unrest will further affect their operations. With many states and cities at various phases of reopening after the government-ordered lockdowns, policyholders should be mindful that there might be added complexity to business interruption coverage due to the on-going COVID-19 pandemic. While these losses are devastating, policyholders should seek insurance coverage to mitigate their impact. There is insurance coverage for these types of losses, 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

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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 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 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 to obtain the materials it needs for its operations because the company that normally supplies those 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.

### 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. Often the attraction property must be within a certain distance of the insured property, however, to the extent there is no such policy requirement, this coverage can be quite broad. To the extent civil unrest causes physical damage to another business 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.

## 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.

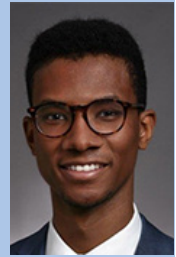
Insurance companies may also argue that business interruption coverage is not triggered unless there is a “complete and total” cessation of business even though the policy includes no such requirement. This can be devastating when a policyholder operates numerous business activities at a location and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

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, following civil unrest, often a structure will not be fit for reoccupation at the time of the executive order allowing access to the property. 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 insurance company is not entitled to such benefit. Insurance companies may also improperly attempt to use the impact of the COVID-19 pandemic to limit recovery. Such arguments should similarly be rejected.

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## 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 civil unrest potentially covered by insurance, and then pursue that coverage aggressively. ▲

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