

Civil Unrest Insurance Coverage: Fundamental Issues

A Practical Guidance® Practice Note by Christina Arnone, Stinson, LLP



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This practice note discusses the types of insurance coverage that may be available under property policies when an insured suffers physical loss or damage to insured property as a result of civil unrest. This practice note considers standard policy terms, limitations, and exclusions implicated by rioting, civil commotion, vandalism, and/or looting in connection with incidents of civil unrest. Further, this practice note explores how the cause of loss may impact the applicable policy deductibles and other issues that may arise between policyholders and insurers concerning the interpretation of key policy terms.

For more details about civil unrest and insurance coverage, see New Appleman Sports & Entertainment Insurance Law § 2.03 (Examining Losses Related to Riots, Civil Unrest, and Terrorism). New Appleman on Insurance Law Library Edition § 8.12 (The Impact of Social Issues on Insurance Regulation). New Appleman Sports & Entertainment Insurance Law § 17.27 (Understanding Political Risk Insurance). and New Appleman on Insurance Law Library Edition § 45.12 (Terrorism).

For additional information about insurance coverage, see [Commercial Property Insurance](#), [Commercial Property and Liability Insurance](#), [First-Party Property Insurance Policies](#), [Making a Commercial Property Claim after Loss or Damage](#), [Property Insurance Claim Filing Checklist](#), [Insurance Claims Resource Kit](#), and [Insurance Coverage Resource Kit](#).

Causes of Loss to Insured Property during Incidents of Civil Unrest

Extensive property damage often accompanies prolonged rioting and civil unrest. According to press reports, Minneapolis and Saint Paul experienced approximately \$550 million in damage to approximately 1,500 properties within a period of five days after the May 25, 2020, death of George Floyd Jr. The 1992 Los Angeles riots are reported to have resulted in approximately \$1 billion in damage to more than 1,000 properties during a five-day period. Insurance is critical to recovery efforts in the wake of such widespread damage.

Commercial property policies ordinarily provide coverage for property damage caused by civil unrest, including damage from rioting, vandalism, and looting. There are three types of “cause of loss” forms issued by the Insurance Services Office (ISO) for property insurance policies: basic form (CP 10 10), broad form (CP 20 10), and special form (CP 30 10). These cause of loss forms specify the types of perils, or causes of loss, for which insurance coverage is provided. Special form (or “all risks”) policies provide coverage for all risks of direct physical loss that are not otherwise excluded or limited by the policy, which, in the absence of any applicable exclusions or limitations, would include coverage for damage caused by rioting, civil commotion, vandalism, and looting, among other things. While the basic and broad form policies only provide coverage for certain, named perils identified in the policy, rioting, civil commotion, and vandalism are all covered perils under these forms. Looting is also covered under the basic and broad forms if it occurs at the time and place of the riot or civil commotion.

The basic cause of loss form insures for certain losses caused by the perils of fire, lightning, explosion, windstorm, hail, smoke, aircraft, vehicles, riot, civil commotion, vandalism, sprinkler leakage, sinkhole collapse, and volcanic action. See CP 10 10 10 12. The broad cause of loss form covers the aforementioned perils covered under the basic cause of loss form and adds coverage for certain losses caused by the perils of falling objects, weight of snow, ice or sleet, water damage (from system or appliance leakage), and collapse from specified causes. See CP 10 20 10 12.

For additional information about applicable ISO forms, see ISO Form CP 10 10 10 00 (2015) - (Causes of Loss - Basic Form), ISO Form CP 10 20 10 00 (2015) - (Causes of Loss - Broad Form), and ISO Form CP 10 30 10 00 (2015) - (Causes of Loss - Special Form). When presenting or adjusting a claim for losses arising from incidents of civil unrest, it is important for policyholders and insurers to consider the distinctions between these potential causes of loss. While it might be natural to refer to such damage as arising from "rioting," or "looting" under modern usage of those terms, the cause of loss might more appropriately be described under the insurance policy as a "civil commotion." Further, one evening of rioting would likely involve numerous incidents of looting and/or vandalism by individual actors or groups of actors. At first glance, one might think these distinctions irrelevant if the policy insures against them all. But policies are sometimes modified or manuscripted to exclude or limit coverage for particular perils. While riots and civil commotion are covered perils under the standard ISO cause of loss forms, they may be excluded in particular circumstances or for policyholders with global operations in areas prone to civil unrest. Further, the categorization of the cause of loss may have a tangible financial impact on a policyholders' recovery even if no policy exclusions are implicated, because each of these perils (rioting, civil commotion, vandalism, looting) may result in a different number of applicable "occurrences" under the policy, triggering a different number of limits and deductibles or self-insured retentions, or, in certain circumstances, may implicate sublimits or combine with certain other perils to limit or expand coverage. When determining the cause of loss, it is important for the practitioner to keep in mind that many of these terms are not defined in the policy. But see CP 10 10 and CP 20 10 (describing vandalism as "willful and malicious damage to, or destruction of, the described property"). Where a term is undefined by an insurance policy, its plain, ordinary, and popular meaning should be used. Further, under the doctrine of contra proferentem, ambiguities are ordinarily construed against the insurer. Id.

For more guidance on covered perils, occurrences, and exclusions, see [Exclusions in Liability Insurance: Exceptions and Coverage, Occurrence or Claims-Made Policies, and Number of Occurrences Determination and Insurer Obligations State Law Survey](#).

For additional information about interpreting insurance contracts, see [Business Insurance Policies Interpretation](#) and Appleman on Insurance Law & Practice Archive § 6.1 (Contra Proferentem: Rationale and Necessity of Ambiguity).

Riot

Rioting has been defined as a tumultuous disturbance of the peace, and "includes public disturbance or tumult as an essential element." *North Bay Schools Ins. Auth. v. Indus. Indem. Co.*, 6 Cal. App. 4th 1741, 10 Cal. Rptr. 2d 88 (1992); see also *Providence Washington Ins. Co. v. Lynn*, 492 F.2d 979, 982-83 (1st Cir. 1974); *Pan American World Airways, Inc. v. Aetna Cas. & Sur. Co.*, 368 F. Supp. 1098, 1134 (S.D.N.Y. 1973), aff'd 505 F.2d 989 (2d Cir. 1974). There are variations in judicial interpretation of the term "riot" and courts have raised questions as to whether ancient criminal law definitions should be applied to terms in modern commercial insurance contracts. *Pan American*, 505 F.2d at 1020-21 (discussing three different bodies of authority on the meaning of the term riot); *Couch on Insurance* §§ 152:6 and 152:16. The Second Circuit Court of Appeals has found the most "common sense" formulation of a riot to be when a "multitude of individuals gathers and creates a tumult." *Pan American*, 505 F.2d at 1021. Individual acts of vandalism or arson committed by groups of individuals acting in secret, outside the public view and with no intent that their actions be observed, do not qualify as a riot. *North Bay Schools*, 10 Cal. App. 4th at 1747-48. A subsequent public disturbance resulting from individual criminal acts does not convert those actions into a riot. *Providence Washington Ins. Co.*, 492 F.2d at 982-83 ("a stealthy act of destruction is not transformed into an act of riot because upon later discovery of the damage there is a public disturbance"). *Couch on Insurance* § 152:16.

Civil Commotion

Civil commotion "denotes a broader, more prolonged disturbance than riot." *North Bay Ins. Auth.*, 6 Cal. App. 4th at 1746-48. Civil commotion is a named peril for ISO basic and broad form cause of loss forms. Special form (all risks) policies cover all risks of loss unless specifically limited or excluded and, therefore, may not refer to civil commotion at all. But all risks policies often list civil commotion as a "specified cause of loss" or "named peril." See CP 10 30 09 17. The specified causes of loss generally include those perils covered under basic and/or broad form cause

of loss forms, including riot and civil commotion. As a result, certain policy provisions that provide coverage for particular types of loss (e.g., interruption of power supply) may limit or exclude that coverage where loss is caused by riot or civil commotion. Further, as a specified cause of loss, in rare circumstances, riot or civil commotion may create coverage when combined with another cause of loss that would otherwise be excluded under the policy. The particular terms of the policy should always be consulted to determine the scope of coverage. Even if an all-risks policy does not refer to the peril of civil commotion, it should be considered as a potential cause of loss for damage resulting from incidents of civil unrest.

For additional information, see ISO Form CP 10 30 09 17 (2015) - (Causes of Loss – Special Form).

Courts have described civil commotion as a period of civil unrest that may encompass numerous riots and widespread vandalism and looting. If there has been damage from prolonged civil unrest and rioting stretching over several days or longer, or multiple insured locations have suffered damage over the course of one evening or more, the losses might be more appropriately characterized as arising from a civil commotion.

In a seminal decision, the Fourth Circuit described a civil commotion as an “uprising among a mass of people which occasions a serious and prolonged disturbance and an infraction of civil order, not attaining the status of war or an armed insurrection.” *Hartford Fire Ins. Co. v. War Eagle Coal Co.*, 295 Fed. 663, 665 (4th Cir. 1924). The Northern District of Ohio characterized widespread civilian looting and vandalism over a period of several days after the United States 1989 invasion of Panama as a “civil commotion.” See *Sherwin-Williams Co. v. Ins. Co.*, 863 F. Supp. 542, 547 (N.D. Ohio 1994), *aff’d* and adopted *sub nom.*, 105 F.3d 258 (6th Cir. 1997). In *Pan American World Airways v. Aetna Cas. & Sur. Co.*, the Southern District of New York described a civil commotion as “a situation similar to a riot but involving either a more serious disturbance or one that is part of a broader series of disturbances.” 368 F. Supp. 1098, 1136 (S.D.N.Y. 1973), *aff’d* 505 F.2d 989, 1019 (2d Cir. 1974). There need not be an element of political revolt for an event to qualify as a civil commotion. *Sherwin-Williams Co.*, 863 F. Supp. at 547. The term has been said to instead involve “occasional local or temporary outbreaks of unlawful violence” and describes a “domestic disturbance” where individuals “gather together and cause a disturbance and tumult.” *Pan American*, 505 F.2d at 1019–20 (quotation and citations omitted). A civil commotion does not rise to the level of an organized rebellion against the government, however. *Couch on Insurance* § 152:14.

It has been said to occur “in a particular locale” but a civil commotion could “encompass a county, a country or an area.” *Couch on Insurance* § 152:14; see also *Pan American*, 368 F. Supp. at 1137. Civil commotion indicates “disturbance, disorder, turbulent crowds, and tumult having some extension in time or space.” 368 F. Supp. at 1132–33. See also *Holiday Inns Inc. v. Aetna Ins. Co.*, 571 F. Supp. 1460, 1467 (S.D.N.Y. 1983).

In *War Eagle Coal*, the insurer claimed that a loss caused by fire fell within a policy exclusion for “loss or damage caused directly or indirectly by invasion, insurrection, civil war or commotion.” 295 Fed. at 664. The insurer adduced evidence that a worker strike and union organization resulted in a “state of organized and continuous lawlessness” in the county. However, the fire which caused the loss had been set by a group of conspirators working quietly in the middle of the night. The Fourth Circuit rejected the possibility that the fire resulted from rioting because there had been no disturbances or demonstrations before the fire began. *War Eagle Coal*, 295 Fed. at 665. The Fourth Circuit found a “serious question” as to whether the losses arose from lawlessness attending civil commotion within the county or, instead, from the actions of five conspirators acting quietly and in secret and affirmed the district court’s factual finding that the losses were not caused by civil commotion and thus, not excluded. *Id.*

While these decisions aid in our understanding of historical terms such as “civil commotion” and “riot,” past judicial analyses should not preclude policy interpretations that better comport with a modern, popular understanding of events that arise from social unrest. Terms left undefined by a policy must be given their popular and usual meaning. *Appleman on Insurance Law & Practice* § 6.1. As the District Court for the Southern District of New York noted in *Pan American*, “[p]opular usage is a changing thing.” 368 F. Supp. at 1136 (concluding that, “if assemblages numbering as few as three could ever make ‘riots,’ for insurance purposes, they do not today”). While a civil commotion arising from a single precipitating cause might have been an entirely local event for one community or perhaps one county at the time of the *War Eagle Coal* decision in 1924 or even the *Pan American* decision in 1974, recent widespread social justice movements have demonstrated that an incident in one area now may spark civil unrest that quickly spreads across the entire nation. At the same time, businesses have expanded operations geographically, and communications and broadcast technologies and capabilities have changed and expanded significantly over time, such that civil unrest originating in Minneapolis (e.g., civil unrest arising from the death of George Floyd Jr.) may also be a catalyst for rioting that

results in damage to a policyholder's insured properties in New York, Seattle, and Houston. Distinct groups of individuals may cause physical loss or damage to property at each insured location, but if the losses are all connected to one, precipitating event, it might be argued that the losses all arise from one "occurrence" of civil commotion and/or rioting under the policy. Conversely, it might be asserted that the damage in each location and/or on each separate date is a separate occurrence (whether of vandalism, arson, looting, rioting, and/or civil commotion), subject to separate policy limits and, potentially, separate deductibles and self-insured retentions. Courts and practitioners will need to remain pragmatic while defining and applying these historical terms to modern insurance contracts, keeping in mind standard doctrines of contract construction, including the plain meaning rule and contra proferentem doctrine.

For more on coverage and exclusions for riots and civil commotion, see Appleman on Insurance Law & Practice Archive § 6.1 (Contra Proferentem: Rationale and Necessity of Ambiguity). New Appleman on Insurance Law § 43.02 (War and Other War-Like Events, Including Civil Commotion, Riot and Acts of Terrorism, Exclusions – Losses Resulting from Riot and Civil Commotion Are Sometimes Excluded but Covered Under the ISO Basic Form Commercial Property Policy). Couch on Insurance § 152:6. Couch on Insurance § 152:14; and Couch on Insurance § 152:16.

Number of Occurrences and Determination of Policy Limits, Deductibles, and Self-Insured Retentions

Under most property insurance policies, the limits and deductibles apply on a "per occurrence" basis. If there are multiple occurrences, there may be multiple limits and deductibles owed, unless the policy contains language limiting the applicable number of deductibles implicated during a particular event. For certain risks that tend to create continuous damage for a period of time, most insurance policies have provisions that combine all continuous damage within a 72-hour period into one "occurrence" regardless of the duration of the incident or the number of impacted locations. On the other hand, under such provisions, a new occurrence (and potentially another deductible) might be triggered at the end of the

defined period, if the same peril continues to cause new damage. A 72-hour limitation is common for terrorism, flood, and earth movement. The 72-hour limitation is also found in many insurance policies for the perils of rioting and civil commotion. However, some insurance policies do not contain any restrictions on the number of applicable occurrences for rioting and civil commotion. If the policy does not contain a 72-hour limitation, the omission may support the conclusion that all losses over an extended period of time (e.g., five days) precipitated by the same event arise from a single occurrence of rioting or civil commotion.

Separately, the number of occurrences is also impacted by the defined cause of loss. Numerous incidents of rioting, vandalism, and/or looting during a prolonged period of continuous civil unrest may all constitute a single instance of "civil commotion" with only one policy deductible owed, regardless of the number of impacted locations or the length of time over which the incidents occur. If the same losses were deemed to result from individual criminal acts of vandalism or looting, instead of one "civil commotion," or one "riot," multiple policy limits and deductibles or self-insured retentions might apply.

For example, if five different store locations in one metropolitan area were damaged on the same evening by a roving group of bad actors, or by different actors during widespread rioting and looting, it would be logical to conclude there is still only one occurrence of rioting and/or civil commotion, subject to one deductible, rather than five occurrences with five separate deductibles. Likewise, if the losses occurred on multiple, separate evenings, during a period of continuous civil unrest precipitated by one event, the losses could be described as having been caused by one "occurrence," and the damages subject to only one deductible.

The manner in which the cause of loss is defined may therefore have a significant impact on a policyholder's ultimate recovery. A practitioner should always consult the policy's definition of "occurrence" to determine its meaning and potential scope in the context of property damage from civil unrest, as well as any provisions that may combine all damage within a particular time period for incidents of rioting and/or civil commotion.

For additional guidance, see [Business Insurance Policies Review, Occurrence or Claims-Made Policies](#), and [Number of Occurrences Determination and Insurer Obligations State Law Survey](#).

Potentially Applicable Policy Coverages

Standard property policies usually provide coverage for physical loss or damage to insured property resulting from rioting, civil commotion, vandalism, and for looting at the time and place of the riot or civil commotion, including from damage to building exteriors, broken glass, and attached signage. Certain types of property frequently damaged in rioting or vandalism may be excluded or subject to significant sublimits, including landscaping, outdoor signage not attached to the building, and fences and antennas. Civil unrest may result not only in physical loss and damage to a building and its contents, but also may lead to an interruption of business operations that causes business income losses. Most commercial property policies also provide coverage for lost business income during the time the policyholder is repairing, replacing, or otherwise restoring the damaged property, a period typically called the “period of restoration.” Oftentimes, policyholders also have extended business income coverage for a “ramp up” period after the business has repaired or restored its property, but before operations are back to normal and profits back to pre-loss levels.

For more information about property insurance coverage, see [Commercial Property Insurance](#), [Commercial Property and Liability Insurance](#), [First-Party Property Insurance Policies](#), [Making a Commercial Property Claim after Loss or Damage](#), and [Property Insurance Claim Filing Checklist](#).

For more guidance on business interruption insurance, see [Business Interruption Insurance](#), [Business Interruption Insurance: Post-Pandemic Litigation Developments](#), [COVID-19 Business Interruption Claims Litigation](#), [COVID-19 Business Interruption Claims Litigation Checklist](#), [COVID-19 Business Interruption Claims Pre-Litigation](#), [COVID-19 Business Interruption Claims Pre-Litigation Checklist](#), [COVID-19 Business Interruption Claims State Law Survey](#), and [COVID-19 Insurance Litigation Resource Kit](#).

Another form of property coverage that is often implicated during periods of civil unrest is “civil authority” coverage. This may apply if a business has not suffered any physical damage to its own property but lost access to the business premises, and suffered resulting business income losses, because of government-ordered closures. Civil authority

coverage applies when there is damage to other property (not the policyholder’s) within a certain distance of the insured business, of a type otherwise insured under the policy, and as a result, civil authorities take action that prohibits access to the insured location. For example, a government-ordered street closure associated with an adjacent collapsed building may trigger civil authority coverage. With incidents of civil unrest, issues arise about whether the closure was ordered by a government entity or, instead, by a private property management company or landlord. Issues may also arise about whether the government closure resulted from previous physical loss or damage within the required radius of the insured property. This coverage may also be subject to a waiting period that could hinder a business’s ability to recover for temporary closures, such as evening-only closures that occur in anticipation of nighttime rioting.

For additional information about civil authority coverage and government-mandated closures, see [The Constitutionality of Government Action Mandating COVID-19 Business Interruption Coverage](#), [Fighting State Virus-Related Insurance Coverage Mandates](#), [Maximize Chances of Insurance Coverage for COVID-19](#), and [Applying Commercial Property Insurance To COVID-19 Losses](#).

If the civil unrest is anticipated, a business may want to take steps to protect its property before any loss occurs. Some property policies provide coverage for the costs to relocate insured property to protect it from immediately impending physical loss or damage. Some businesses have broader coverage for expenses incurred to take action to temporarily protect or preserve the property from an impending threat of physical loss or damage (e.g., boarding up the property) and even for business income losses for a specified period of time after such action is taken. However, depending on the particular policy language at issue, the policyholder will likely have to demonstrate the physical loss or damage was imminent and/or that the peril actually resulted in property damage. This may be particularly complicated with a loss such as rioting, looting, and civil commotion because of the unpredictability of individual criminal behavior.

For additional guidance about business income losses, see [Making a Commercial Property Claim after Loss or Damage](#) and [Property Insurance Claim Filing Checklist](#).

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Christina Arnone helps businesses manage risk by ensuring appropriate insurance coverage, assisting with insurance claims, and suing when insurers refuse to pay.

When a business suffers an insured loss, Christina advocates to maximize coverage for her client. If there is a dispute, Christina works to negotiate a reasonable resolution. She has a proven track record of success representing businesses with disputes under all types of business insurance policies, including property and business interruption, professional liability, product recall and contamination, directors and officers (D&O), employment liability, general liability (GL), environmental liability, fiduciary liability and cyber.

Christina has represented numerous clients faced with natural and man-made disasters through all stages of the recovery process. Christina also regularly advises financial institutions, property developers, commercial real estate investors, and REITs. Christina drafts insurance, indemnity and other risk transfer provisions in contracts, including leases, loans, development agreements and construction contracts. Christina advises policyholders during policy placement and renewal and assists with insurance review for M&A transactions. Christina also has significant experience negotiating for insurance coverage for mass tort claims and has successfully developed and applied models to calculate and allocate liability among dozens of insurers for hundreds of tort claims.

Christina joined the firm after clerking for the Honorable John W. Lungstrum of the United States District Court for the District of Kansas.

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