

## Publication

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### Client Alert: Insurance Coverage for Losses Caused by Vandalism, Riots and Civil Commotion

There have been unfortunate incidents of property damage to businesses across the nation. Part of the process of assessing the damages and losses is securing insurance coverage. Fortunately, most commercial property policies cover losses caused by "riot," "civil commotion" and "vandalism," whether those policies are "named peril" or "all risk" policies.

These terms are rarely defined in insurance policies, but they have been defined elsewhere and interpreted by the courts. Webster's defines "vandalism" as the "willful or malicious destruction or defacement of things of beauty or of public or private property." *Webster's Third New International Dictionary* 2532 (1986). One court has found that "vandalism" is "conducted away from public view with the intent that [it] remain unobserved," contrary to a "riot." *North Bay Schools Ins. Authority v. Industrial Indemnity Co.*, 6 Cal. App. 4th 1741, 1746 (1992). *Black's Law Dictionary* defines "riot" as an "unlawful disturbance of the peace by an assemblage of usu[ally] three or more persons acting with a common purpose in a violent or tumultuous manner that threatens or terrorizes the public or an institution." *Riot*, *Black's Law Dictionary* (11th ed. 2019). Finally, "civil commotion" is "[a]n 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. A civil commotion requires the wild or irregular action of

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many persons assembled together." *Hartford Fire Ins. Co. v. War Eagle Coal Co.*, 295 F. 663, 665 (4th Cir. 1924). Thus, in essence, where a riot ends, a "civil commotion" begins. See *Sherwin-Williams Co. v. Ins. Co.*, 863 F. Supp. 542, 547 (N.D. Ohio 1994), *rev'd in part on other grounds*, *Sherwin-Williams Co. v. Ins. Co.*, 105 F.3d 258 (6th Cir. 1997), (widespread looting and vandalism occurring over a period of days constituted civil commotion).

Based on these definitions, it seems likely that property damage suffered by businesses recently should fall within coverage for either "vandalism," "riot" or "civil commotion." In addition to coverage for property damage, businesses that sustained physical loss or damage may have coverage for lost income resulting from the closure of their businesses. Business interruption coverage typically contains a waiting period before insureds can begin to recover. Lost income resulting from the shuttering of third-party businesses which receive products or services of the insured may also be covered under contingent business interruption coverage. And, policies with civil authority coverage may further provide coverage in the event that curfews caused a loss of income.

Insurers may latch on to media reports of fringe ideological agendas behind some of the unrest in an attempt to deny coverage under "terrorism" exclusions in their policies. Whether, and to what extent, such exclusions apply remains to be seen, but insureds should be skeptical of any effort by insurers to eliminate coverage and closely scrutinize the language in such exclusions. For example, some exclusions only apply when an event has been "certified" by a government agency as terrorism. Others require proof that the effect or intent of an act was to intimidate or coerce a government or further a political, ideological, religious or social objective.



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Many property insurance policies require insureds to submit proofs of claim within 30, 60 or 90 days after a loss, and these time limits continue to run even in the midst of a global pandemic. Therefore, it is important for businesses to assess the damage and quantify the losses quickly and either submit proofs of claim or ask their insurers for extensions prior to the expiration of any time limits in their policies. Where insurers accept coverage, insureds can expect that the insurers will submit extensive requests for information and documentation of the losses that many insureds, engrossed in the process of getting their businesses back up and running, may find burdensome. Nevertheless, it is vitally important for insureds to document the damages and losses thoroughly and in an organized fashion so that they can receive insurance proceeds in a timely manner. Insurers also will hire adjusters that specialize in finding ways to reduce the amounts insurers have to pay. For insureds that have experienced significant damages and losses, it is well worth their while to retain experienced coverage counsel and forensic accountants that can assist them in navigating the claims process.

If you have any questions regarding riot, looting, and vandalism claims or other insurance policyholder issues, please do not hesitate to contact Paul Walker-Bright and Nicholas Graber or your Neal Gerber Eisenberg attorney.

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