

Social Unrest: Insurance Coverage for Looting and Vandalism

December 2, 2020

- Recent Social Unrest
- Potential for Future Social Unrest
- Strikes, Riots and Civil Commotion (SRCC) Cover
- SRCC Cover is Distinct from Terrorism and Sabotage Cover
- Additional Insurance Coverage for Looting and Vandalism
- Potential Insurance and Reinsurance Coverage Issues
- Questions?

France - November 2018 to March 2019

- “Yellow Vest” protests of proposed fuel tax increase
- Estimated economic loss of USD 4.43 billion (France 24)

Hong Kong - March 2019 to present

- Anti-Extradition Law Amendment Bill Movement triggered by the introduction of the Fugitive Offenders amendment bill by the Hong Kong government

Chile - October to November 2019

- Protests over proposed subway fare hikes
- Estimated insured losses of up to USD 2 billion (Insurance Journal)

United States - May 2020 - present

- Nationwide protests to end police brutality and systemic racism
- Estimated insured losses range from USD 1-2 billion (Axios)

Social media and high speed internet allow for news that sparks protests to travel around the World in seconds

- Protests in the US that might have been local in the past (e.g., 1992 LA Riots) are now national and international (e.g., George Floyd protests)

Events that spark protests are, for the most part, very difficult to predict

According to Verisk Maplecroft's Civil Unrest Index report released in February 2020:

- 47 jurisdictions in 2019 witnessed a significant uptick in protests
- Projected that 75 out of the 125 countries in its forecasting database would see an increase in civil unrest during the first half of 2020
- The number of countries rated as an extreme risk in their Index jumped from 12 in 2019 to 20 in early 2020. This list includes Ethiopia, India, Lebanon, Nigeria, Pakistan and Zimbabwe

- SRCC is a stand-alone insurance policy or an insurance clause, typically added by endorsement, that covers physical loss or damage directly caused by strikers, locked-out workers, participation in labor disruption, and riots.

- Model SRCC endorsement terms:

...this Policy shall be extended to cover loss or damage due to strike, riot and civil commotion which for the purpose of this Endorsement shall mean (subject always to the Special Conditions hereinafter contained) loss of or damage to the property insured directly caused by:

1. the act of any person taking part together with others in any disturbance of the public peace (whether in connection with a strike or lock-out or not) not being an occurrence mentioned in condition of the Special Conditions hereof,
2. the action of any lawfully constituted authority in suppressing or attempting to suppress any such disturbance or in minimizing the consequences of any such disturbance,
3. the willful act of any striker or locked-out worker performed in furtherance of a strike or in resistance to a lock-out,
4. the action of any lawfully constituted authority in preventing or attempting to prevent any such act or in minimizing the consequences of any such act.

SRCC typically excludes loss occasioned by (a) war, etc., (b) mutiny, civil commotion amounting to a popular rising, military rising, insurrection, rebellion, revolution, military or usurped power, (c) any act of any person acting on behalf of or in connection with any organization with activities direct toward the overthrow by force of the government or to the influencing of it by terrorism or violence.

And by definition or exclusion (NMA 2920), Terrorism cover typically does not provide for SRCC cover:

- “Terrorism” is typically defined as a use of force or violence by a person or group acting in connection with any organization, committed for political, religious, ideological or similar purposes, including the intention to influence any government or put the public in fear.
- “Sabotage” typically must be acts that are also committed for these similar purposes and to cause the same effect.
- So as not to overlap with SRCC cover, Terrorism and Sabotage insurance typically includes an exclusion for damage caused by “strikes, riots, or civil commotion.”

Please note, as always any particular claim must be evaluated based on applicable policy terms and its own circumstances.

- All Risk Policies
 - Typical all-risk policies state that they will pay for “direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.”
 - In turn, Covered Cause of Loss is defined as “direct physical loss unless the loss is … [e]xcluded … or … [l]imited[.]”
 - Accordingly, with respect to coverage for claims arising out of vandalism and looting, one key issue is whether there is any applicable exclusion
 - All-risk policies may expressly exclude SRCC cover. See e.g., *Pan Am. World Airways, Inc. v. Aetna Cas. & Sur. Co.*, 505 F.2d 989 (2d Cir. 1974) (SRCC exclusion did not apply to the high jacking of a plane by a Palestinian revolutionary organization).
- Commercial Property Policies
 - Typically the ISO Basic Form Commercial Property policy covered loss resulting from riots or civil commotion while excluding coverage for war and military action
 - Wording may now expressly exclude civil commotion and riots
 - Courts narrowly apply these exclusions. See *id.*
 - If the looting and vandalism results in a direct physical loss, an insured may be entitled to indemnification for business interruption losses, but only if suspension of operations is necessary and for only so long as it is
 - If business was already closed due to COVID-19, would there be business interruption losses?

- Civil Authority Cover
 - May cover businesses affected by curfews put into place by governing authorities to prevent looting and vandalism
 - Subject to important limitations, civil authority typically covers lost business income and extra expense when (1) a covered cause of loss results in damage to property not at the covered premises; (2) a civil authority takes an action that prohibits access to the covered premises; and (3) the access prohibition causes the insured to lose business income or incur additional expenses
 - **Geographic Limitation:** terms usually require that the covered premises be located within some specified distance of the damaged property, normally a mile or a shorter distance, such as 1,000 feet. See, e.g., *City of Chicago v. Factory Mut. Ins. Co.*, 2004 U.S. Dist. LEXIS 4266, *4 (N.D. Ill. 2004) (closure of three Chicago airports following 9/11 attacks in New York City was not the “result of direct physical damage to property that is at or within 1,000 feet of the airport premises.”)
 - **A causal connection between damage and access prohibition may be required.** See *Syufy Enters. v. Home Ins. Co.*, 1995 WL 129229 (N.D. Cal. 1995) (insured was not entitled to coverage for Rodney King LA riots because, among other things, the insured failed to establish that the curfew was enacted “as a direct result of damage to or destruction of property.”)
 - **Access must be prohibited, not merely burdened or reduced.** See, e.g., *Southern Hospitality, Inc. v. Zurich Amer. Ins. Co.*, 393 F.3d 1137, 1140-41 (10th Cir. 2004) (discussing cases and finding no coverage where FAA’s order grounding flights after 9/11 attacks did “not itself prevent, bar, or hinder access to” the insured’s covered hotels)

- Other Insurance Clauses?
 - Different primary policies could be argued to cover looting and vandalism
- Application of Terrorism Exclusion - NMA2920?
 - When do protests constitute “the use of force/or threat of force or violence” by any persons, whether “acting alone” or on behalf or in connection with any organisation, for political, religious, ideological or similar purposes, to influence any government or to put the public, or any section of the public, in fear”?
 - Were the Hong Kong protests organized to influence the government? Would an arbitration panel agree?
- Follow the Fortunes?
 - A local primary insurer may decline to invoke the terrorism exclusion while the reinsurers invokes the clause

Questions?