



## Alerts

### Part Four: Reviewing Key U.S. Insurance Decisions, Trends, & Developments

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*Insights for Insurers*

This is the fourth installment of our series of articles reviewing some of the key trends and developments currently impacting the U.S. insurance industry.

Many commentators have predicted an increase in political risks in the United States. These risks include riots, civil commotion, and other activities that can produce substantial property losses as well as injuries and deaths. At one point, there were estimates of \$1 to \$2 billion in losses in 2020 from civil unrest. There were protests, demonstrations, or riots in approximately 140 U.S. cities in the wake of George Floyd's death.

It was reported previously that there was at least \$500 million in damage to more than 1,500 locations in the Twin Cities in 2020. During a two-week period alone, the New York Police Department paid \$115 million in overtime. The Rodney King riots in 1992, for comparative purposes, resulted in \$775 million in damage, or \$1.42 billion in 2021 dollars.

Although 2021 has not seen the degree of protest and civil unrest activity that was witnessed in 2020, civil commotion activities continued in 2021. Recent events suggest that it is becoming more common for civil commotion to follow results of elections and trials. Indeed, demonstrations over climate change, police brutality, criminal trials, and labor strikes continue to be on the radar for insurers and policyholders. Civil unrest, coupled with the "defund the police" movement, has produced a variety of losses for which coverage has been sought under first-party property, third-party liability, and strike, riot, and civil commotion policies ("SRCC"). Businesses often will look to their property coverage for potential coverage. First-party claims may include claims from property damage resulting from rioting, looting, or demonstration, damages regarding stolen property and merchandise, and lost revenue resulting from rioting, looting, or demonstration.

Physical damage caused by fire, riots, civil commotion, or vandalism may be covered under an all-risk or business owners' policy. While loss of income may be covered under business income or business interruption coverage, this is typically implicated only if there is direct physical damage to the premises, and temporal and causational limitations may apply. Because governmental orders barring access to a specific area due to rioting have yet to be seen, civil authority coverage appears unlikely.

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Although policyholder lawyers sometimes give the illusion that coverage is automatically available for riot-related damages, there often can be significant coverage issues. In first-party coverage claims, the issue of the number of occurrences may present significant issues. Depending upon the particular facts and policy language, potential positions may include multiple losses at a single location (such as when a store is vandalized or looted on successive days), losses at multiple locations in the same city, or losses at locations in different cities throughout the country (or some combination of the foregoing) constituting an occurrence. Additionally, vacancy provisions may limit coverage when buildings have been vacant for a designated period of time — 60 days is a common period. There may be issues concerning the actual cause of the loss where the specific loss may be unclear or subject to dispute (for example, whether the loss resulted from vandalism or from arson). Thus, the specific terms of the policy must be closely analyzed. Property insurance policies often contain exclusions that apply to various war risks, including insurrection. In the event that an insurrection is declared in connection with riots, losses arising therefrom may be excluded. Proving such damages will often present issues, particularly in light of COVID-19 related business closures.

There is the potential for third-party liability claims against governmental entities. These may include: businesses alleging property damage or lost revenue due to failure to prevent riots or to take adequate action to limit them; businesses alleging property damage or lost revenue as a result of law enforcement activities such as road closures, barricading business complexes; persons alleging bodily injury caused by law enforcement from pepper spraying, projectiles, tear gas, etc.; or persons alleging civil rights or claims for false arrest and malicious prosecution. There are numerous defenses and barriers to recovery, including governmental immunity. Governmental immunity may require claimants to show willful or intentional misconduct and some states immunize governmental entities and public officials from liability for claims "arising out of riot, civil commotion, or mob action or out of any act or omission in connection with the prevention of any of the foregoing."

There also may be claims against adjacent businesses or property owners for loss of use (e.g., Business A was damaged during riot, thereby preventing adjacent Business B from operating); claims arising from businesses' use of force to protect property or persons (e.g., business hires private security to protect property and security causes injury to protestors, rioters, or bystanders); and claims arising from businesses' failure to perform contractual obligations due to riot (e.g., business cannot manufacture or deliver products because riots have shut down the business or prevented access to facilities or delivery routes). The most meritorious claims often would be claims against the rioters/looters for the injuries and property damage they caused, but generally, the individuals remain unidentified and/or are judgment-proof.

Depending upon the facts of the claim, there could be various other coverage issues, including the absence of occurrence/fortuity, and some items may not constitute "bodily injury" or "property damage" within the meaning of the policy (e.g., emotional distress/loss of revenue will be difficult to recover under most CGL policies). There may be a number of occurrence(s) issues presented, and several exclusions (such as those for expected or intended acts, criminal actions or exclusions for riot, civil commotion, or mob action) may apply.

- [Part One: Environmental, Social, and Governance \(ESG\)](#)
  - [Part Two: Social Inflation](#)
  - [Part Three: COVID-19 Business Interruption Coverage Litigation](#)
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Derrick Bryson Taylor, [George Floyd Protests: A Timeline](#), *New York Times*, (Nov. 5, 2021).

Minneapolis officials estimate \$150 million worth of damages following unrest in city, *KSTP Eyewitness News*, (June 5, 2020).

[iii] [NYPD Officers Raked In \\$115 Million In Overtime During First 2 Weeks Of Recent Protests](#), *The Gothamist*, (June 28, 2020).

[iv] [The 10 Most Costly Riots in the U.S.](#), *Chicago Tribune*, (Nov. 26, 2014).