

10A Couch on Ins. § 152:22

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Jordan R. Plitt, Steven Plitt, Daniel Maldonado, and Joshua D. Rogers

Part VI. RISKS AND ACTIVITIES COVERED BY INSURANCE POLICY

Subpart C. RISKS COVERED UNDER OTHER TYPES OF INSURANCE

Chapter 152. Property Insurance: War, Riot, and Civil Disturbance; Act of Civil Authority

II. Loss by Order of Civil Authority

§ 152:22. Nature of Provision, Generally

References

Unlike losses caused by violence or warlike activity as discussed previously in this chapter, some losses occur because of the actions of a civil authority functioning in its ordinary governing capacity. Because this kind of loss is unpredictable, it is typically excluded from most property insurance policies. Many such provisions exclude liability for the insurer for loss or damage caused directly or indirectly by enforcement of any ordinance or law regulating construction, repair or right to use property or requiring the destruction or tearing down of any property, and deny coverage for seizure or destruction of property by order of government authority. Some policies restore coverage for losses resulting from governmental actions taken to prevent the spread of fire. An insured may seek coverage for some of the excluded losses by paying additional premiums.

For the exclusion to be applicable, some courts have held that the governmental action creating the loss does not have to be expressly authorized but must fall within the scope of the authority's administrative discretion.¹ Others courts have scrutinized the lawfulness of the particular order causing the loss much more closely.²

The term “civil authority,” in a business interruption policy, was held to refer to situations where a civil authority prohibits access to the insured's premises resulting in a total loss of business income.³ A business interruption policy did not provide coverage where the insured was denied access, by order of a civil authority, to a location at which it leased space to conduct a trade show; it was not reasonable to conclude that “described locations” within the meaning of a civil authority clause included a location described in another provision which explicitly applied only to physical loss or damage, and not to the prohibition of access due to order of civil authority.⁴

A provision in an insurance contract that stated that coverage for business losses caused by action of a civil authority began after such action prohibited access to the insured premises for a continuous period of 72 hours was not in the nature of a deductible.⁵

Interruptions to a commercial airline's business following the attacks of September 11 were not the “direct result” of damage to adjacent premises within the meaning of a clause of a property, terrorism, and sabotage insurance policy extending business interruption coverage to a situation when access to the insured locations is prohibited by order of civil authority as a direct result of damage to adjacent premises; flights out of the airport were actually halted prior to the attack on the nearby Pentagon, and the government's subsequent decision to halt operations at the airport indefinitely was based on fears of future attacks.⁶

Where the insured contractor, who provided janitorial and HVAC services in common in tenanted areas of office buildings that were completely destroyed, also serviced other nearby sites access to which the city temporarily prohibited due to the destruction, a “civil authority” coverage provision of a property insurance policy potentially applied to off-site business interruption costs incurred by the insured; the loss of income at the nondestroyed sites may not have occurred but for the civil authority's orders.⁷

Economic damage to an insured state agency that operated a municipal airport's parking lot, consisting of an inability to generate income during the Federal Aviation Administration's (FAA) nationwide grounding of commercial aircraft in the wake of the terrorist attacks, was outside the coverage of a property insurance policy's civil authority coverage provision, which required that the interruption of the insured's operations be due to a civil authority's "prohibit[ing] access to [the insured's] covered property," and the FAA's order had not prohibited access to the parking lot.⁸

CUMULATIVE SUPPLEMENT

Cases:

Prohibition of access to restaurant experienced by insured restaurant owner following occurrence of storm was not the result of damages caused by a "covered cause of loss" under civil-authority provision included in business income section of insurance policy; policy's definition of a "covered claim of loss" contained various exclusions listed in another section that operated to nullify coverage, and the policy made clear that insurer would not pay for loss or damage caused directly or indirectly by any of the listed exclusions, including water infiltration, sewage back-up or overflow, and waterborne material that had been carried or moved. [Maritime Park, LLC v. Nova Casualty Company, 2019 WL 1422918 \(N.J. Super. Ct. App. Div. 2019\)](#).

Anti-concurrent clause in insurance policy's civil-authority provision, stating that loss or damage caused by certain excluded causes was excluded regardless of any causes or events that contributed concurrently or in any sequence to the loss, applied to insured restaurant owner when park in which restaurant was located was closed pursuant to Department of Environmental Protection's closure order; one of the reasons the park was kept closed for several weeks was the flood waters that overflowed portions of the park, and water damage was one of policy's exclusions. [Maritime Park, LLC v. Nova Casualty Company, 2019 WL 1422918 \(N.J. Super. Ct. App. Div. 2019\)](#).

Recycling bin with wheels was not "vehicle" under provision of residential cooperative apartment building's New-York-law-governed all-risks insurance policy which provided that policy's exclusion of costs associated with enforcement of any law or ordinance that required testing of gas system for integrity did not apply if testing was required by direct loss causing physical damage to covered property from aircraft or vehicles; apartment residents used bin to discard electronics. [1070 Park Avenue Corporation v. Fireman's Fund Insurance Company, 777 Fed. Appx. 561 \(2d Cir. 2019\)](#).

Under Illinois law, Governor's executive orders that were issued to deal with COVID-19 (virus) pandemic and closed businesses, suspended in-person dining in restaurants, and prohibited gatherings of 50 or more people were "law" within meaning of exclusion in hotel operator's policy for loss caused by enforcement of or compliance with any ordinance or law regulating use of any property; orders had force of law and could be enforced with coercive sanctions against private businesses and persons, governor was acting under statutory authority, some overlap between "law" and "ordinance" did not violate rule against superfluity, and interpreting "law" to mean only statute passed by federal or state legislature would lead to strange results. [Bradley Hotel Corp. v. Aspen Specialty Insurance Company, 19 F.4th 1002 \(7th Cir. 2021\)](#).

Acts and decisions exclusion in business insurance policy that excluded coverage for loss resulting from acts or decisions of governmental body, but provided coverage if "excluded cause of loss resulted in covered cause of loss" was ambiguous since it created conflict with policy's definition of covered loss; it could not be used to deny coverage. [Ungarean v. CNA, 2022 PA Super 204, 286 A.3d 353 \(2022\)](#).

Exclusion for "loss or damage caused directly or indirectly" by "enforcement of any ordinance or law" that regulates "construction, use or repair of any property" barred coverage for insured restaurant operator's business income losses resulting from governmental orders prohibiting on-site dining due to COVID-19 virus. [Coast Restaurant Group, Inc. v. Amguard Ins. Co., 90 Cal. App. 5th 332, 307 Cal. Rptr. 3d 133 \(4th Dist. 2023\)](#), review denied, (June 28, 2023).

[END OF SUPPLEMENT]

Footnotes

1 See [Conner v. Manchester Assur. Co.](#), 130 F. 743, 746 (C.C.A. 9th Cir. 1904); [California Cafe Restaurant v. Nationwide Mut. Ins. Co.](#), 1994 WL 519449 (N.D. Cal. 1994) (stating that where the authority abuses its discretion, the loss is still excluded but the property owner can bring an inverse condemnation action); [Hawaii Land Co. v. Lion Fire Ins. Co.](#), 13 Haw. 164, 1900 WL 2526 (1900).

A property insurance policy's ordinance and law endorsement did not provide coverage for renovations the insured private secondary and college preparatory boarding school made to portions of a hall that were not damaged by a lightning strike and fire in hypothetical compliance with codes not mandating those renovations under Pennsylvania law. [Regents of Mercersburg College v. Republic Franklin Ins. Co.](#), 458 F.3d 159, 211 Ed. Law Rep. 642 (3d Cir. 2006).

To the extent the Americans with Disabilities Act (ADA) regulated alterations to a hall after a lighting strike and fire and required the insured private secondary and college preparatory boarding school to make paths and travel accessible to the primary-function areas on each floor of the hall, the plain language of the property insurance policy's ordinance and law endorsement covered the insured's costs of complying with the ADA. [Regents of Mercersburg College v. Republic Franklin Ins. Co.](#), 458 F.3d 159, 211 Ed. Law Rep. 642 (3d Cir. 2006).

An insured business was not entitled to coverage, under the special property coverage provisions of a business insurance policy, for property seized by a sheriff pursuant to a writ of attachment. The sheriff's seizure of the property was an event that resulted in an exclusion from coverage because seizure or destruction of property by a governmental authority was not covered. [Bigsky, LLC v. Hartford Cas. Co.](#), 2010 WL 3075575 (D. Colo. 2010).

Commercial-lines policy's exclusion, under its civil-authority (tied to property loss or damage), business-income, or extra-expenses coverages, for loss or damage caused by or resulting from acts or decisions, including failure to act or decide, of any person, group, organization or governmental body, precluded, under Pennsylvania law, coverage for loss or damage to insured medical practice stemming from government-ordered shutdown in response to the COVID-19 pandemic; shutdown orders were decisions by state and local governments regulating business operations at the insured property. [Paul Glat MD, P.C. v. Nationwide Mutual Insurance Company](#), 2021 WL 1210000 (E.D. Pa. 2021).

Under Wisconsin law, ordinance-or-law exclusion of property coverage, excluding coverage for loss caused directly or indirectly by enforcement of or compliance with any ordinance or law, was not unenforceable as against public policy; requiring insurance company to pay for risk it specifically excluded would violate rule that court will not interpret insurance policies to provide coverage for risks insurer did not contemplate or underwrite and for which it has not received premiums. [Horizon West Condominium Homes Association, Inc. v. Travelers Indemnity Company of Connecticut](#), 2022 WL 17574860 (E.D. Wis. 2022).

2 See [Bankers Fire & Marine Ins. Co. v. Bukacek](#), 271 Ala. 182, 189, 123 So. 2d 157, 163, 84 A.L.R.2d 672 (1960); [American Cent. Ins. Co. v. Stearns Lumber Co.](#), 145 Ky. 255, 140 S.W. 148, 150 (1911); [Rhode Island Ins. Co. of Providence, R.I., v. Fallis](#), 203 Ky. 112, 261 S.W. 892, 893, 37 A.L.R. 432 (1924); [Reed v. Newark Fire Ins. Co.](#), 74 N.J.L. 400, 406, 65 A. 1053, 1055 (N.J. Sup. Ct. 1907); [In re West Electronics, Inc.](#), 128 B.R. 905, 912, 25 Collier Bankr. Cas. 2d (MB) 203, Bankr. L. Rep. (CCH) P 74100 (Bankr. D. N.J. 1991). For a more complete discussion of the of these issues, See [Couch on Insurance 3d](#), § 152:25.

3 [New York Career Institute v. Hanover Ins. Co.](#), 6 Misc. 3d 734, 791 N.Y.S.2d 338 (Sup 2005).

As a general rule under Texas law, civil authority coverage in a property insurance policy is intended to apply to situations where access to an insured's property is prevented or prohibited by an order of civil

authority issued as a direct result of physical damage to other premises in the proximity of the insured's property. [Evanston Insurance Company v. AmSpec Holding Corp.](#), 2020 WL 6152190 (S.D. Tex. 2020).

Under Georgia law, insured health care providers failed to establish that government orders specifically prohibited access to their over-thirty locations covered under all risk insurance policy issued by liability insurer, as required for civil authority coverage provisions in policy to cover business income losses allegedly sustained as result of COVID-19 pandemic; insureds did not allege that government orders prohibited complete access to insured locations; in fact, insureds alleged that they were required by government orders to service COVID-19 patients. [AU Health System, Inc. v. Affiliated FM Insurance Company](#), 2022 WL 801513 (S.D. Ga. 2022).

Under Colorado law, insured restaurant operator which did not allege damage to “other property” was not entitled to coverage under civil authority provision for losses it allegedly suffered due to reduced customer traffic and government lockdown orders during COVID-19 pandemic; policy provided that insurer would pay for actual loss of business income and extra expenses caused by action of civil authority that prohibited access to its premises, however, civil authority coverage was triggered when covered cause of loss caused damage to property “other than covered property at premises.” [Sagome, Inc. v. Cincinnati Insurance Company](#), 56 F.4th 931 (10th Cir. 2023).

4 [Penton Media, Inc. v. Affiliated FM Ins. Co.](#), 245 Fed. Appx. 495 (6th Cir. 2007) (applying Ohio law).

5 [BY Development, Inc. v. United Fire and Cas. Co.](#), 206 Fed. Appx. 609 (8th Cir. 2006).

6 [United Air Lines, Inc. v. Insurance Co. of State of PA](#), 439 F.3d 128 (2d Cir. 2006) (applying New York law).

California counties' stay-at-home and business closure orders, in attempt to prevent spread of COVID-19 virus, were not based on “direct physical loss of or damage to property” at premises *other than* insured business operator's lodging facilities, and, thus, civil authority provision provided no coverage for insured's loss of business income under its commercial property insurance policy with extended civil authority, business income, and extra expense coverage; policy stated it would pay actual loss of business income insured sustained and necessary extra expense caused by action of civil authority that prohibited access to described premises due to direct physical loss of or damage to property, *other than at described premises*, caused by or resulting from any covered cause of loss. [Inns-by-the-Sea v. California Mutual Ins. Co.](#), 71 Cal. App. 5th 688, 286 Cal. Rptr. 3d 576 (4th Dist. 2021), review denied, (Mar. 9, 2022).

Insured restaurant operator was not entitled to coverage under civil authority provision of businessowners policy for losses suffered as result of being required to suspend operations in accordance with COVID-19 disaster proclamation; insured did not allege damage to neighbors' property, proclamation was not issued in response to dangerous physical conditions resulting from property damage at premises located within one mile of insured property, and proclamation was issued to lower risk of transmission of COVID-19 by limiting number of people gathered in one place. [Jesse's Embers, LLC v. Western Agricultural Insurance Company](#), 973 N.W.2d 507 (Iowa 2022).

7 [Zurich American Ins. Co. v. ABM Industries, Inc.](#), 397 F.3d 158 (2d Cir. 2005) (applying New York law).

8 [Philadelphia Parking Authority v. Federal Ins. Co.](#), 385 F. Supp. 2d 280 (S.D. N.Y. 2005) (applying Pennsylvania law).

City's placement of cement barriers at locations that tracked each side of intersection near insured's grocery store location during period of civil unrest that followed Minneapolis police officer's killing of store patron directly in front of store did not prohibit insured's access to store, but caused only partial suspension of business operations, where customers could still enter intersection through gates or by using sidewalk; thus, insured's civil authority extension of business income coverage in its commercial property policy due to loss of access was inapplicable; at most, barriers had effect of restricting or hampering access to store, and city took no action to forbid or prevent insured's or store customers' access to store.

[Cup Foods Incorporated v. Travelers Casualty Insurance Company of America, 2023 WL 359602 \(D. Minn. 2023\)](#).

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