

10A Couch on Ins. § 152:29

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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

§ 152:29. Confiscation; Quarantine

References

All-risk policies typically exclude liability for loss or damage resulting from confiscation by a governmental authority. This exclusion often comes into play where property is seized due to illegal use. To illustrate, an insured's building was damaged when police obtained and executed warrants to search the building and seize drug-related materials. The court found that the warrant was an “order of governmental authority” as per the language of the governmental acts exclusion to the policy, and that the damage to the building fell within that exclusion because it was the indirect result of the execution of the warrant. The court was not persuaded by the insured's argument that the warrant only authorized search and seizure and did not authorize the destruction of the property.¹

However, the confiscation must be lawfully executed for the exclusion to be applicable. For example, where government agents seized property without a warrant, a court found that a lack of exigent circumstances made the warrantless seizure unlawful. For that reason, the exclusion did not apply to the damages to the property that were sustained during the seizure and subsequent holding by the IRS.² In another case, police officers were authorized by warrant to seize two items from an insured's apartment. Instead, the officers seized 2,000 items, and delayed in obeying a subsequent court order to return all but the two designated items. Only some of the items were returned, and 26 of those were severely damaged. In finding the civil authority exclusion within the policy “wholly inapplicable” to the damage and loss, the court emphasized that there was no order of confiscation for the property, and even if the warrant were considered to be such an order, it did not authorize the removal of the subsequently damaged or lost items. The court also stated that the police failure to promptly obey the court order to return the property directly violated a governmental order.³

Where a fishing vessel suffered fire damage shortly after the Nicaraguan government had seized it, the exclusion for governmental seizure did not bar coverage for the damage because the “efficient cause” of the fire was a malfunction of the vessel's engine that was totally unrelated to the seizure.⁴ In another case, where a plane carrying drugs crashed, subsequent seizure by the government did not invoke the exclusion because the plane was already a total loss due to the crash and would have been sold for salvage with or without the removal by the authorities.⁵ Another court found that the governmental exclusion did not bar coverage where goods were confiscated by Iranian customs officials, later offered to be released, then found to be inexplicably lost.⁶

Not all government actions or orders restricting movement or taking temporary possession of property constitute “seizures” as contemplated by civil authority exclusions. To illustrate, where a health department embargo restricted the movement of the insured's candy inventory, a court rejected an argument that the embargo was a “constructive seizure,” because the embargo order did not authorize the government officials to take possession of the candy, and they did not do so.⁷ Additionally, where the police temporarily took possession of a recaptured stolen automobile to return it to its owner, the governmental confiscation exclusion did not apply.⁸

Civil authority exclusions may bar liability for loss or damage due to civil quarantine orders. Where an insured sought to recover for damages associated with removal, clean-up, and loss of business after its greenhouse geraniums suffered bacterial contamination and a state quarantine order was issued, a court found that the question of whether the losses were caused by the quarantine order or by the contamination should be decided by a trier of fact. The court stated that the civil authority exclusion would not apply to any losses caused by the bacterial contamination.⁹

A loss by the provider of money transfer services, as a result of an armored transfer company failing to deposit funds into the provider's account the day after picking them up, and instead retaining them for its own purposes, pursuant to a scheme of "playing the float," did not come under an exclusion for governmental seizure of property, in a policy covering loss of money in the care and custody of an armored motor vehicle company resulting directly from theft, disappearance, or destruction, since the theft occurred several days before the FBI's seizure of money in the company's vaults, when the company failed to deposit the provider's funds into its account.¹⁰

CUMULATIVE SUPPLEMENT

Cases:

Under Missouri law, insureds who brought putative class action against insurer that issued policies covering unforeseen loss of season ski pass benefits did not plausibly allege loss based on covered event, and thus failed to state claims based on insurer's refusal to pay claims for loss of benefits resulting from ski resort closures after issuance of governmental orders restricting travel and other activities during COVID-19 (virus) pandemic, despite argument that loss was covered under provision of policy that applied when insured was "quarantined"; policy's use of term "quarantine" unambiguously did not extend to situations where insureds' activities and travel were restricted by general stay-at-home orders not otherwise directed to individual insureds. [In re Arch Insurance Company Ski Pass Insurance Litigation, 2021 WL 4191464 \(W.D. Mo. 2021\)](#).

Travel-insurance policy's General Exclusions which provided that insurer would not pay for any loss under policy caused by, or resulting from travel restrictions imposed for certain area by governmental authority was valid and, under Georgia, Oregon, Missouri, Pennsylvania, and Utah law, barred insureds' claims that insurer breached contract by denying claims for losses they incurred when travel plans they had paid for were canceled due to COVID-19 (virus) restrictions; on plain reading of policy, insureds' cancellations were all caused by governmental orders issued in response to COVID-19, including quarantines, stay-at-home orders, and states of emergency, which were travel restrictions for which policy excluded coverage. [In re Generali COVID-19 Travel Insurance Litigation, 2021 WL 6052127 \(S.D. N.Y. 2021\)](#).

Under Missouri law, insured's claim for coverage under travel insurance policies for loss resulting from flight cancellation because of government-imposed COVID-19 stay-at-home orders fell within scope of policies' epidemic exclusion; policies defined "epidemic" as "contagious disease that spreads rapidly and widely among population in area and which is recognized as epidemic by World Health Organization (WHO)," and WHO's website included COVID-19 on its list of pandemic or epidemic diseases. [Bauer v. AGA Service Company, 25 F.4th 587 \(8th Cir. 2022\)](#).

Under Missouri law, "stay-at-home orders" issued by state and local governments, which restricted travel and other activities to prevent spread of COVID-19, and related closures of ski resorts during skiing season were not "quarantines" within meaning of ski pass preserver individual travel protection policies covering unforeseen loss of season ski pass benefits, which provided that insurer would reimburse insureds for unused portion of ski pass if insureds canceled their season passes due to one of several enumerated covered events, including being quarantined; stay-at-home orders, which restrained insureds from certain activities and in part provided that residents should practice social distancing when they left their homes, did not impose form of compulsory isolation. [Rossi v. Arch Insurance Company, 60 F.4th 1189 \(8th Cir. 2023\)](#).

Under Missouri law, term "quarantined" in ski pass preserver individual travel protection policies, which provided that insurer would reimburse insureds for unused portion of season ski pass if insureds canceled season passes due to one of several enumerated "covered events," including "being hijacked, quarantined, required to serve on jury, and served with court order to appear as witness," unambiguously meant, at time policy was purchased prior to COVID-19 pandemic, compulsory isolation of insureds and not broad less-than-mandatory restraint on travel or activities, even though pandemic had expanded term's

meaning; policy used “quarantined” as verb, and term appeared alongside terms such as “hijacked,” which obligated or forced individuals to remain in specific location. [Rossi v. Arch Insurance Company](#), 60 F.4th 1189 (8th Cir. 2023).

Insurance policy exclusion for losses that were caused directly or indirectly by seizure or destruction of property by order of governmental authority applied to claimed losses allegedly incurred when insureds were required to deliver surplus personal protective equipment (PPE) to state pursuant to Governor's executive order during COVID-19 pandemic, even if PPE was not taken pursuant to governmental action indicating some wrongdoing on insureds' part or use of force; in compliance with government order, representative of insureds contacted state's PPE coordinator, and, after receiving instructions, delivered surplus PPE to hospital. [BA Ventures, LLC v. Farmers Insurance Exchange](#), 327 Or. App. 499, 535 P.3d 323 (2023).

[END OF SUPPLEMENT]

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Footnotes

1 [Alton v. Manufacturers and Merchants Mut. Ins. Co.](#), 416 Mass. 611, 613-14, 624 N.E.2d 545, 546 (1993) (noting that the plaintiff had not argued that the police officers had created the damage maliciously or that they had acted outside the scope of what was reasonably necessary).

2 [In re West Electronics, Inc.](#), 128 B.R. 905, 912-15, 25 Collier Bankr. Cas. 2d (MB) 203, Bankr. L. Rep. (CCH) P 74100 (Bankr. D. N.J. 1991) (stating that “the governmental acts exclusion hinges upon the propriety of the seizure”).

3 [Danulevich v. Hartford Fire Ins. Co.](#), 36 Conn. Supp. 570, 421 A.2d 559, 562 (Super. Ct. Appellate Sess. 1980).

4 [Empacadora De Castilla, S.A. v. Hemispheric Ins. Co., Ltd.](#), 552 So. 2d 1138, 1138-39 (Fla. 3d DCA 1989).

5 [Dronge v. Monarch Ins. Co. of Ohio](#), 511 F. Supp. 1, 10 (D. Kan. 1979).

6 [Allied Van Lines Intern. Corp. v. Centennial Ins. Co.](#), 685 F. Supp. 344, 346 (S.D. N.Y. 1988) (finding that although the goods were detained by customs officials, they were not lost until almost two years later).

7 [Duensing v. Traveler's Companies](#), 257 Mont. 376, 384, 849 P.2d 203, 208 (1993).

For purposes of insurance policy excluding coverage for losses that were caused directly or indirectly by seizure or destruction of property by order of governmental authority, although “seizure” may often involve wrongdoing or use of force, neither need be component; instead, ordinary purchaser of insurance would understand word “seizure,” more broadly, to include any taking of property by legal or governmental authority. [BA Ventures, LLC v. Farmers Insurance Exchange](#), 327 Or. App. 499, 535 P.3d 323 (2023).

8 [Blaylock v. Country Mut. Ins. Co.](#), 85 Ill. App. 3d 1042, 1045, 41 Ill. Dec. 351, 407 N.E.2d 849, 852 (1st Dist. 1980).

9 [Massi's Greenhouses, Inc. v. Farm Family Mut. Ins. Co.](#), 233 A.D.2d 844, 844, 649 N.Y.S.2d 307, 308 (4th Dep't 1996).

10 [Omnex Group, Inc. v. United States Fire Ins. Co.](#), 117 A.D.3d 444, 985 N.Y.S.2d 73 (1st Dep't 2014).

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