

40

**ALFA International**

The Global Legal Network  
*Celebrating 40 Years*



**INSURANCE COVERAGE CLAIMS: THE AFTERMATH OF  
RIOTS, VANDALISM AND CIVIL COMMOTION**  
*June 18, 2020*

# PRESENTERS



**Glenn FencI**  
JOHNSON & BELL  
Chicago, IL  
E: [fencIgj@jbltd.com](mailto:fencIgj@jbltd.com)  
T: (312) 372-0770



**Valerie Moore**  
HAIGHT BROWN &  
BONESTEEL LLP  
Los Angeles, CA  
E: [vmoore@hbblaw.com](mailto:vmoore@hbblaw.com)  
T: (213) 542-8000



**Angela Higgins**  
BAKER STERCHI COWDEN  
& RICE, LLC  
Kansas City, MO  
E: [higgins@bscr-law.com](mailto:higgins@bscr-law.com)  
T: (816) 471-2121

# HISTORIC PERIOD OF CIVIL COMMOTION

Following the death of George Floyd on May 25, 2020, global protests erupted regarding racial justice and community policing.

As of the date of this presentation, demonstrations continue across the United States, encompassing protests regarding the deaths of Ahmaud Arbery, Breonna Taylor, and countless known and unknown Black Americans at the hands of police officers.

# HISTORIC PERIOD OF CIVIL COMMOTION

The protests have resulted in vandalism, destruction and theft of property, and interruption to businesses, including those already impacted by COVID-19.

This seminar looks at how insurance coverage for these losses is covered and best practices for how such claims should be handled.



# COVERAGE FOR RIOTS AND CIVIL COMMOTION



# COVERAGE FOR RIOTS AND CIVIL COMMOTION

First-party property insurance policies generally include riot and civil commotion as covered causes of loss, unless there is a specific exclusion in the policy.

# COVERAGE FOR RIOTS AND CIVIL COMMOTION

## HOMEOWNERS POLICIES

### COVERAGE C - PERSONAL PROPERTY

We insure for direct physical loss to the property described in Coverage C caused by a peril listed below unless the loss is excluded in SECTION I - EXCLUSIONS.

...

4. Riot or civil commotion.

...

8. Vandalism or malicious mischief.

9. Theft, including attempted theft and loss of property from a known place when it is likely that the property has been stolen.

# COVERAGE FOR RIOTS AND CIVIL COMMOTION

## BUSINESS OWNERS POLICIES

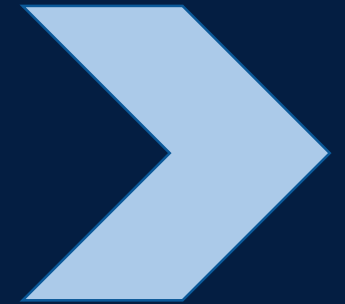
“Specified causes of loss” means the following:

Fire; lightning; explosion; windstorm or hail; smoke; aircraft or vehicles; **riot or civil commotion; vandalism**; leakage from fire extinguishing equipment; sinkhole collapse; volcanic action; falling objects; weight of snow, ice or sleet; water damage.





“CATASTROPHIC EVENT”

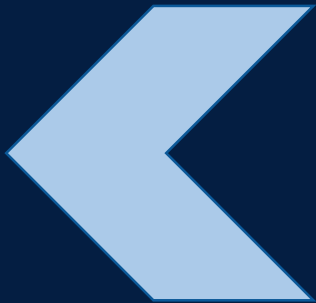


# “CATASTROPHIC EVENT”

- The Illinois Department of Insurance issued a June 8, 2020, bulletin providing guidance to insurers in the wake of “civil unrest” associated with these demonstrations.
- Carriers are encouraged to handle current civil unrest claims as they would any “catastrophic event,” and employ expedited claims handling, advance claim payments, and fair treatment of all policyholders.

# “CATASTROPHIC EVENT”

- The categorization of these claims by the Department as a catastrophic event likely aids an insured’s ability to argue that its loss, even if occurring over a prolonged period, constitutes a single occurrence for purposes of meeting its deductible



MORATORIUM ON  
CANCELLATIONS AND  
NON-RENEWALS



# MORATORIUM ON CANCELLATIONS AND NON-RENEWALS

- Some insurance policies expressly prohibit an insurer from cancelling or refusing to renew a policy due to losses caused by a catastrophic event.
- However, where such policies are silent, the Illinois Bulletin requests that carriers implement a 60-day moratorium on the cancellation or non-renewal of impacted policies, which extends to **August 7, 2020.**



# COVID-19 CONSIDERATIONS



# COVID-19 CONSIDERATIONS

- Insureds may be impacted by both “civil commotion,” riots, and vandalism *and* continued impacts of COVID-19
- Illinois guidance is that insurers should not deny or delay claims processing for insureds who have made partial payments since COVID-19 emergency declarations (March 20, 2020, in Illinois)

# COVID-19 CONSIDERATIONS

- In calculating business interruption losses associated with the 2020 civil rights protests, what is the measure of loss?
- Illinois Department of Insurance recommends basing calculations on pre-COVID income.





# BUSINESS INTERRUPTION INSURANCE



# BUSINESS INTERRUPTION INSURANCE

California's Department of Insurance has issued guidance with respect to insurance for losses due to civil unrest

<http://www.insurance.ca.gov/01-consumers/140-catastrophes/CivilUnrest.cfm>

# BUSINESS INTERRUPTION INSURANCE

## California's guidance addresses Business Interruption Insurance

“Business Income Coverage – This coverage is for the loss of income sustained due to the necessary suspension of business operations during a period of restoration. The suspension of business operations typically must be caused by direct physical loss or damage to the policyholder's premises resulting from a covered peril.”

# BUSINESS INTERRUPTION INSURANCE

Note: some businesses may also have “Contingent Business Interruption” coverage

- Designed to cover the insured business’ loss of income resulting from the loss, damage, or destruction of property owned by others, particularly direct suppliers of goods or services and potentially direct customers/recipients/distributors
- Is there a business interruption coverage argument if suppliers/customers/distributors have experienced losses due to the civil unrest?

# BUSINESS INTERRUPTION INSURANCE

- Many policies identify acts of a civil authority as a covered cause of loss, or do not exclude it
  - “Counter protests” – actions by law enforcement, National Guard
  - Closures, curfews mandated by civil authority

# BUSINESS INTERRUPTION INSURANCE

California DOI guidance:

**“Civil Authority Coverage** – Business income insurance typically includes civil authority coverage, which provides loss of income due to prohibited access to the business premises by civil authority such as a governmental entity. Civil authority insurance covers income lost during a limited period of time. Businesses that are forced to limit hours or suspend operations due to rioting, vandalism, or civil commotion and have coverage for this particular loss of income may be covered after an initial waiting period.”

# BUSINESS INTERRUPTION INSURANCE

**California DOI guidance to businesses affected:**

**Tips for Businesses with Claims:**

- **Preservation of Property:** Attempt to secure the business against further loss, such as boarding up shattered windows and securing inventory.
- **Report Claims Immediately:** In addition to reporting to the insurer, policies may require reports to law enforcement.

**Track Expenses and Save Damaged Property:** Track all the expenses you incur to preserve your property and complete emergency repairs. Save your damaged property so it can be inspected by your insurance adjuster. Consider taking photos and video of the damaged property - especially damaged property that is perishable and must be discarded.

**Document Communications with Insurance Agent, Adjusters, and Insurance Company:** Log all of your conversations with your insurance company, agent/broker, and/or adjuster about your claim and policy limitations in a dedicated "claim diary." If your adjuster says something is excluded, limited, or subject to certain conditions, ask the adjuster to point out the specific provision in your policy being cited.

**Hire Licensed Contractors:** The California Contractors State License Board (CSLB) has publications that can help you identify and avoid problems before they occur. Contact the CSLB at 1-800-321-2752 to obtain a free copy of their publications and/or verify the licensing status of a contractor.

**Grace Periods for Paying Premiums:** Businesses affected by looting should contact their insurance companies about the grace periods and premium rebates that the Insurance Commissioner has ordered as a result of the COVID-19 crisis. Because of the Commissioner's prior actions, businesses should be provided additional time to pay premiums and may qualify for lower premiums during the pandemic.

# BUSINESS INTERRUPTION INSURANCE

California DOI guidance to businesses affected:

Tips for Businesses with Claims:

- **Save Damaged Property:** Save damaged property for inspection and take photos and video of the damaged property - especially damaged property that is perishable and must be discarded.
- **Hire Licensed Contractors**



# BUSINESS INTERRUPTION INSURANCE

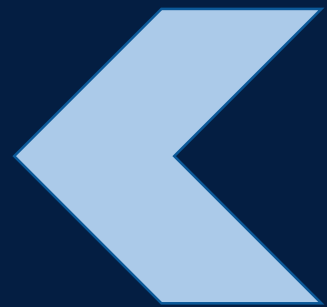
California DOI guidance to businesses affected:

Tips for Businesses with Claims:

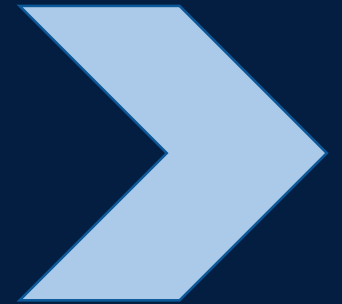
- “Grace Periods for Paying Premiums: Businesses affected by looting should contact their insurance companies about the grace periods and premium rebates that the Insurance Commissioner has ordered as a result of the COVID-19 crisis. Because of the Commissioner’s prior actions, businesses should be provided additional time to pay premiums and may qualify for lower premiums during the pandemic.”

# POP-UP QUESTION

- The Illinois Department of Insurance recommends that claims for riots, vandalism and civil commotion be handled as:
  - A. Pure property damage claims
  - B. Catastrophic events
  - C. Fire loss claims
  - D. Liability claims



# RELEVANT EXCLUSIONS



# RELEVANT EXCLUSIONS

- The current global situation may implicate rarely used policy exclusions, including those related to vacancy, terrorism, and military action
- Illinois Department of Insurance recommends “erring on the side of the policyholder” in interpreting exclusions.

# RELEVANT EXCLUSIONS

VACANCY

# RELEVANT EXCLUSIONS - VACANCY

## HOMEOWNERS POLICIES

We do not insure, however, for loss:

...

2. Caused by:

...

d. Vandalism and malicious mischief if the dwelling has been vacant for more than 30 consecutive days immediately before the loss.

# RELEVANT EXCLUSIONS - VACANCY

## BUSINESS OWNERS POLICIES

### b. Vacancy Provisions

If the building where loss or damage occurs has been vacant for more than 60 consecutive days before that loss or damage occurs:

(1) We will not pay for any loss or damage caused by any of the following, even if they are Covered Causes of Loss:

(a) Vandalism;

...

(c) Building glass breakage;

...

(e) Theft; or

(f) Attempted theft.

# RELEVANT EXCLUSIONS

## ACTS OF TERRORISM



# RELEVANT EXCLUSIONS – ACTS OF TERRORISM

## BUSINESS OWNERS POLICIES

“Certified act of terrorism” means an act that is certified by the Secretary of the Treasury, in accordance with the provisions of the federal Terrorism Risk Insurance Act, to be an act of terrorism pursuant to such Act.

# RELEVANT EXCLUSIONS – ACTS OF TERRORISM

The criteria contained in the Terrorism Risk Insurance Act for a “certified act of terrorism” include the following:

1. The act resulted in insured losses in excess of \$5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act; and
2. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

# RELEVANT EXCLUSIONS

INSURRECTION, REBELLION,  
REVOLUTION, CIVIL COMMOTION,  
AND POLITICAL UNREST

# RELEVANT EXCLUSIONS - INSURRECTION

## BUSINESS OWNERS POLICIES

War And Military Action – “We” do not pay for loss caused by:

- 1) war, including undeclared war or civil war; or
- 2) a warlike action by a military force, including action taken to prevent or defend against an actual or expected attack, by any government, sovereign, or other authority using military personnel or other agents; or
- 3) insurrection, rebellion, revolution, or unlawful seizure of power including action taken by governmental authority to prevent or defend against any of these.

# RELEVANT EXCLUSIONS - INSURRECTION

## HOMEOWNERS POLICIES

We do not insure for loss caused directly or indirectly by any of the following. Such loss is excluded regardless of any other cause or event contributing concurrently or in any sequence to the loss.

. . .

f. War, including the following and any consequence of any of the following:

- (1) Undeclared war, civil war, insurrection, rebellion or revolution;
- (2) Warlike act by a military force or military personnel; or
- (3) Destruction, seizure or use for a military purpose.

The lawyers of ALFA International are proud to serve a varied and diverse community. We recognize the great responsibility we have as legal professionals to advance justice and support the rule of law, for the benefit of all.

# QUESTIONS?

- Use the dialogue box on the right side of your screen to submit any questions to the presenters

THANK YOU! IF YOU HAVE ANY QUESTIONS,  
PLEASE CONTACT ONE OF THE PRESENTERS



**Glenn FencI**  
JOHNSON & BELL  
Chicago, IL  
E: [fencIgj@jbltd.com](mailto:fencIgj@jbltd.com)  
T: (312) 372-0770



**Valerie Moore**  
HAIGHT BROWN &  
BONESTEEL LLP  
Los Angeles, CA  
E: [vmoore@hbblaw.com](mailto:vmoore@hbblaw.com)  
T: (213) 542-8000



**Angela Higgins**  
BAKER STERCHI COWDEN  
& RICE, LLC  
Kansas City, MO  
E: [higgins@bscr-law.com](mailto:higgins@bscr-law.com)  
T: (816) 471-2121



# CLE & POST-WEBINAR SURVEY

- CLE:
  - ALFA INTERNATIONAL IS AN APPROVED PROVIDER OF CLE IN CALIFORNIA and ILLINOIS. If you need credit in another state, you should consult with that state's CLE board for details on how to apply for approval. ALFAI provides a CLE package that answers questions you will likely be asked when applying and also gives direction as to what we believe is needed to apply in each state.
  - **NEW SERVICE:** Some state CLE boards require verification of participation in webinars. To satisfy that requirement, ALFAI will now prompt participants to answer questions and/or provide a verification code, as we did in this webinar. **If this is required in your state:**
    - Please note these items on the Certificate of Completion you will receive after the webinar.
    - Keep a copy of the certificate for auditing purposes.
  - If you encounter any difficulties in obtaining CLE credit in your state, please contact:
    - **Makayla Digan**  
[mdigan@alfainternational.com](mailto:mdigan@alfainternational.com)
- POST-WEBINAR SURVEY
  - You will be prompted to complete a **Post-Webinar Survey** after exiting this webinar. Your feedback will help ALFA International continue to provide quality programming to our members and clients.