

A Spring to remember

In recent weeks and months, the world has watched political demonstrations spread through the Middle East. Citizen-led rebellions have given rise to political changes in Tunisia and Egypt, to a potential civil war in Libya, and so to property damage and business interruption claims. These, in turn, give rise to various insurance coverage questions.

Most insurance policies exclude certain perils, generically described as 'war risks,' such as war, civil war, riot, rebellion, civil commotion, insurrection and military or usurped power. The resulting gap in coverage can usually be filled by buying special war risks coverage.

A large volume of war risks business is underwritten by the London market, but there is surprisingly little authority on interpreting these perils, and the legal authorities are not always consistent. The meaning of particular words depends on their context: for example, 'war' includes 'civil war' - but not if 'civil war' is also listed separately. Sometimes the courts have construed the listed perils as being a list of increasingly serious situations - but they have not always taken that approach.

The word 'riot,' at least, has a clear meaning. *London & Lancashire Fire Ins Co Ltd v Bolands Ltd* (1924) found that 'riot' should be given its 'technical,' criminal law meaning. The current technical meaning is found in the Public Order Act 1986, which defines a riot as where 12 or more persons who are present together use or

With Middle Eastern regimes in flux following the recent public uprisings, re/insurers should examine their war risk exclusions and coverage, say **Giulia Da Re** and **Angus Rodger**

plate-glass windows, and the insurer relied on the exclusion for fire damage. The judge found that the proximate cause was not the fire but the 'lawless violence' of the mob - the exclusion did not apply to this cause, and there was therefore coverage for the loss.

Also noteworthy is *Motor Union Insurance Co Ltd v*



threaten violence and this would cause put someone to fear for his or her safety, and the word has the same meaning in insurance policies.

In summary, some of the events in North Africa will very likely be war risks events, but some will require more thought.

WAS IT WAR?

If a war risk peril has occurred, a second issue is whether the loss was proximately caused by that peril. Not all theft or damage which has occurred in North Africa in recent months was caused by a war risk.

The courts' approach to causation is illustrated by *Marsden v City and County Assurance Co* (1865). A mob broke the windows of a burning house, intending to use the fire as cover for looting the contents. The owner of the house made a claim under his policy covering

Boggan (1923). A motor vehicle was insured, with an exclusion for civil commotion. The car was hijacked in Ireland by four men with revolvers, although the theft was carried out quietly and without any overt violence. The House of Lords nevertheless found that the loss was a 'civil commotion' and the insured's claim failed. The decision was based on other reports of civil commotion in that area at the time.

AGGREGATION KEY ISSUE

As a practical matter, it may be difficult to prove what caused the loss, because evidence is much more difficult to gather during a breakdown of law and order.

Finally, there is the perennial question of aggregation: where does one loss end and

THE BRIEF

- The recent protests in the Middle East are likely to be war risks
- However some events stemming from the uprising require more consideration
- Aggregation of losses is also a major concern

another begin? For example, aggregation may be an issue where an insurer has experienced multiple losses in different parts of Tunisia, Egypt or Libya, or at different times.

Insurance policies often provide for claims to be aggregated (or for a limit of coverage to apply) on a 'per event' basis. An event is 'something which happens at a particular time, at a particular place, in a particular way' (*Kuwait Airways Corp v Kuwait Insurance Co*, 1996). In reinsurance treaties, aggregation often applies to losses which result from a common 'originating cause': this expression has a broader meaning than 'event' (*Axa Reinsurance v Field*, 1996). Where insurance and reinsurance policies provide for losses to be aggregated on differing bases, this creates the possibility of mismatch between the original coverage and the reinsurance.

With a great deal of uncertainty as to how the facts will play out, and a little uncertainty in the case law, it will be difficult for insurers and reinsurers to know for sure the full extent of their losses in relation to events in North Africa. But they should decide now what approach they will take when handling such claims, and make sure that they apply this approach consistently across their business. ®

Is there an issue you want to get off your chest? Contact Soapbox at sarah.tame@informa.com



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