

INSURANCE AND REINSURANCE UPDATE

Re-reading the Riot Act (again): Police liable for consequential losses under the Riot (Damages) Act 1886

As if a lecture at the Police Federation Conference from the Home Secretary wasn't enough, the police have also this week received the Court of Appeal's reading of the riot act. In a decision that opens the door for insurers and businesses to claim further compensation from the police for losses incurred in the 2011 English riots, the Court of Appeal has overturned last year's High Court ruling that compensation under the Riot (Damages) Act 1886 ("**RDA**") is only for direct physical damage caused to a building and its contents.

Under the ruling the police are also liable for consequential losses including business interruption and loss of rent. The Court has also clarified what qualifies as a "*riot*".

Confirmation of the broad scope of compensation payable under the RDA will strengthen calls for the RDA to be reformed. If that happens insurance premiums are likely to increase and property in riot-prone areas will become more difficult to insure.

COURT OF APPEAL DECISION

The judgment in *Mitsui Sumitomo v The Mayor's Office for Policing and Crime* (which concerned the largest single location loss in the 2011 riots, the looting and arson of the Sony Distribution Centre in Enfield, North London) made the following key points:

- *The test for liability under the RDA* - the High Court had been right to hold the police liable. The issue was whether property has been damaged or destroyed as a result of **mob violence**. Whether an assembly is "*riotous and tumultuous*" so the RDA is triggered is a question of degree for the trial judge to evaluate in the light of the primary facts found.
- The Court of Appeal disagreed with the judge in the High Court that the test for liability should, even notionally, be whether the police should have prevented the damage. The police have a strict liability to compensate.
- *What losses are recoverable?* In overturning the High Court's finding on the extent of liability, the Court of Appeal sought to determine Parliament's intention in passing the RDA.
- It held that compensation was potentially recoverable for **all heads of loss** caused by damage to property by trespassers in the course of a riot, including consequential loss eg lost rent and business interruption.
- Nothing in the RDA supported the first instance judge's interpretation of RDA section 2(1) as excluding consequential losses. The purpose of the RDA was remedial so it ought to receive a liberal (ie generous) construction.

- In the RDA Parliament had struck a balance between the interests of owners of damaged property and the wider community (who would effectively bear the cost through police funds). Parliament could have shifted that balance by wording the statute to exclude consequential losses altogether but did not do so.

IMPLICATIONS FOR BUSINESS

Businesses in London and elsewhere in England suffered significant disruption following the 2011 riots and will have large claims for lost profits and lost rents - the Association of British Insurers reported that by September 2013 its members had paid business interruption claims totalling £30.5 million. The business interruption claim for the Sony Distribution Centre alone is believed to be £10-15 million. If the decision is not overturned by the Supreme Court (the police will almost certainly seek a further appeal) compensation for these losses, and for uninsured business interruption and lost rent, will be payable out of public funds.

Businesses and their insurers are likely by now to have settled with the police for direct physical damage losses incurred in the 2011 riots. Most insurers are understood to have reserved rights in those settlements to claim further sums if police liability for consequential losses was confirmed by the courts. However, not all claims may have been settled on the same basis and the police may argue that rights to pursue further losses have already been compromised.

Businesses and insurers should therefore revisit claims they have already made to consider whether further sums can be claimed. Where relevant consequential losses were not covered by insurance, businesses may then have to pursue those claims separately from their insurers. They should also make sure that any relevant evidence has been preserved - the police can be expected to adjust further claims carefully, and faced with wider liability for consequential losses may dispute quantum more aggressively.

REFORM TO THE RDA?

The opportunity for further compensation means that this decision will be welcomed by affected insurers and corporates. However, many argue that a statutory scheme under which such financial losses for large

businesses are compensated out of public money is unfair and anomalous in the 21st Century. The Court of Appeal judgment acknowledges these arguments but says that this is an issue for Parliament. If Parliament does now revisit this legislation, compensation rights for large businesses and their insurers following future riots can be expected to be reduced substantially, if they survive at all. That would likely make insuring commercial property risks, particularly in what are perceived to be riot-prone areas, more difficult and expensive.

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