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# Insurance Law: Business insurance policies to rescue businesses amidst the ongoing unrest and looting



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By **MTHO MAPHUMULO**

**Topics** Insurance Law

15 Jul 2021

The ongoing events of unrest and looting of shops around the country, particularly in KZN and Gauteng, have been worrying for business owners. Businesses have had their properties maliciously destroyed, set alight, plundered and broken into. Moreover, these acts are not limited to certain types or sizes of businesses but range from small to large businesses, from cars to trucks, liquor shops, furniture stores, food outlets and supermarkets. In some instances, various types of businesses are destroyed in a single incident (for example, where a mall is set alight).

Many insurance companies will be affected by these incidents. The relevant business insurance policies in this regard may include instances where a business is insured for damage or destruction to commercial property, theft of stock, loss of income, business interruption, fire, violent protests and damage to tools of trade. In most cases, more than one policy clause will be triggered. If an insurer repudiates your business insurance claim, it is crucial that you seek the necessary legal advice from insurance law experts as the (in)validity of your claim may determine whether you remain in business or close down.

If an insured peril ensues, it is vital that a business owner informs the insurer immediately. This is because the insurer will need to conduct relevant assessments and evaluations to determine the nature and the extent of damage. Thus, delays in reporting claims should be avoided. Further, this avoids issues associated with time barring clauses which are common in insurance policies. Secondly, the policies should be up to date and valid at the time when an insured peril materialises. While this may sound simple enough, there are instances where it may not be so apparent whether a valid insurance contract had been concluded. In those cases, businesses should seek legal advice. An insured business needs to disclose all the material facts and factors relevant to a claim. This is because insurance policies are based on honesty (i.e. bona fide). The relevance and materiality is determined by the facts and circumstances of each case. Sometimes, businesses are insured with various insurers (for various risks) – in those cases it is crucial that businesses report the incidents to all the relevant insurers and lodge their claims.

When lodging or submitting a business insurance claim, it is important for businesses to know that they do not have to provide or know everything requested. It is an embedded legal principle in our law that the insured needs to provide enough details. What is enough in each case will be determined by the merits of each case. Our courts have frowned upon the tendency of insurers requiring “unnecessary details” about the incident so as to find a loophole and avoid paying/repairing in line with the insurance policy terms. In addition, our courts have favoured a purposive approach to insurance repudiations i.e. the primary purpose of the policy is to compensate the business if and when an insured peril materialises and that purpose should override any other trivial factor on which the repudiation is based. This principle has recently been engraved by the [Supreme Court of Appeal in King Price v Concise Consulting Company](#) case.

In some cases, insurers repudiate claims in their entirety, and in some, they partially repudiate (where they believe the business partly contributed to the occurrence of the insured risk or loss). Whether the repudiation is in total or partial, it is of utmost importance that businesses exhaust all the available platforms available to them in order to hold insurers responsible as per their policies. Seeking legal advice is crucial as some technicalities may seem, on the face value, enough to justify repudiation whereas there may be another legal basis on which the repudiation should not stand.

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