

Source: SERVAMUS

Date: 01-Nov-2011

Topic: 15

Ref No: 14752



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ID: 04011810-01 Source Page: 32

# COMMUNITY SAFETY

## - Insurance claims during riots and strikes

South Africans have become used to experiencing what has been termed "strike season" each year, when thousands of people take to the streets at different places to protest either for higher salaries, better employment conditions or basic services such as water, sanitation and electricity. Although it is everyone's democratic right to stage peaceful protests, the lack of peace drives many people nuts during such protests, when property is sometimes damaged, often to the enjoyment of the crowds. The question therefore arises: from whom do you claim if you have been a victim of such destruction?

Compiled by Annalise Kempen

### SOUTH AFRICA IS NOT UNIQUE

During the beginning of August 2011, large parts of London virtually came to a standstill when thousands of disgruntled people took to the streets in some of the worst protest actions the British capital has experienced in years. Even while police were trying to contain the protest, many shop owners in the affected areas erected wooden barriers against their shop windows in an attempt to limit the damage. But the question on the lips of those who had already suffered serious damage was: who was going to pay for the damage they had suffered? Shortly after the riots, the **BBC News UK** news service reported that insurers had pledged that the rebuilding of riot-damaged homes and businesses would start as soon as possible after areas had been cleared as crime scenes. However, the type of compensation depended on whether a person claimed for home insurance or an interruption of trade, or whether the uninsured were possibly claiming for compensation from police authorities. Cover for motorists whose cars had been damaged depended on their insurance policy.

Information revealed by the British Ministry of Justice after the riots, which pertained to who the guilty parties were, stated that out of the 1715 people who had been taken into custody at the time, 1254 were aged between ten and 24 years. The majority of these people were arrested for burglary, violent disorder and theft and, according to a **BBC** article dated 15 September 2011, "more of the offenders are being locked up - and they are being locked up for longer, with the average sentence dished out by magistrates twice the length for similar offences last year. The courts are not treating defendants as ordinary

burglars - they are taking into account the aggravating circumstances of the riots".

Even some of the organisers who had used Facebook and other forms of social media to organise their hits were not spared the brunt of the law. Two people, aged 21 and 22 years respectively, who were "using Facebook to encourage disorder, sought to organise criminality similar to events elsewhere" were sentenced to four years' imprisonment. A 17-year-old who had told friends on Facebook to start rioting received a 12-month youth rehabilitation order, including a ban on using social media, a curfew and 120 hours' community work.

### NO DISCIPLINE

At the end of August 2011, supporters of Julius Malema, the leader of the African National Congress Youth League, protested violently in downtown Johannesburg about Malema's disciplinary hearing, which took place at Luthuli house in the Johannesburg CBD. During their protests they damaged property and attacked police and journalists, injuring at least one person. Violence erupted when police attempted to keep protesters behind a barrier a street block away from the ANC's headquarters. The protesters, some of whom were school-children in uniform, threw stones, bricks and bottles and breached the police barrier. Some burned ANC T-shirts and posters of President Jacob Zuma.

Many senior ANC leaders, such as Secretary-General Gwede Mantashe, did not take the youth's behaviour lightly. Mr Mantashe told the **eNews** Channel that those responsible were enemies of the party. "The burning of the ANC flag and the question of burning the face [poster] of the president of the ANC [Jacob Zuma], obviously when

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only if clients use approved transport service providers to take it to the bank. It's difficult, if not impossible, for our clients to adhere to this condition during the strike, so we have decided to increase their cover for cash held on the premises during the strike," said Lourens Joubert, Head: Commercial Underwriting at Santam during February 2011.

Policy holders must also note exceptions on a car insurance policy, which are those perils or risks that are not covered under the policy. While some exceptions can be removed on payment of an additional premium, there are other exceptions listed in most policy documents under headings like "specific exceptions" - those that cannot be removed under any circumstance. One example of such an exception is that you have no insurance claim when your car is damaged while you are actively taking part in a riot of any kind or taking part in a civil commotion.

#### AN IMPORTANT COURT RULING

At the end of September 2011, the Supreme Court of Appeal upheld an earlier ruling by Justice Mahomed Navsa from the Western Cape High Court when he wrote that the country "could not be subjected to the tyranny of the mob". The court found that the trade unions can be held liable for damage caused by workers during strikes. This followed a High Court ruling favouring eight people, including traders whose stalls were looted and smashed and motorists whose vehicles had been wrecked during a SATAWU (SA Transport and Allied Workers Union) protest march in the Cape Town CBD in May 2006. The group claimed R70 000 in damages.

In a statement following the ruling, Cosatu said: "Whilst Cosatu does not condone violence and damage to property that occurs during some strikes, we will challenge any ruling that seeks to pass the liability for the violent actions of a few individuals and agent provocateurs on to the shoulders of trade unions. Should this be the implication contained in the judgment, the federation will have no other choice but to take this matter up with the Constitutional Court."

Jovial Rantao from the *Daily News* commented as follows on the High Court and Supreme Court of Appeal ruling: "The Supreme Court of Appeal ruling is important for several reasons, the main one being that all of us must be held responsible, legally and morally, for our actions. The ruling must be applauded because ordinary citizens have, for far too long, been held hostage by criminal acts committed by those seeking to either draw attention to their wage demands, or using violence to intimidate employers into a pay settlement. Many South Africans carry physical and emotional scars from serious harm inflicted by striking workers who believe themselves above the law.

Many children are today ~~without~~ <sup>✓</sup> a parent because their lives were taken by those who believed that their demand for a better wage superseded another human's right to life."

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Section 17 of South Africa's Bill of Rights states that "Everyone has the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions," and section 23(2)(c) states that "Every worker has the right to strike".

As much as it is a person's Constitutional right to strike, it is equally another person's right not to strike. South Africa will be a step closer to being a true democracy when strikers and protesters realise the importance of this right, and the limitation it places on them to keep such actions peaceful.

Maybe we should welcome the fact that Cosatu wants to take the ruling to the Constitutional Court, and hopefully the Constitutional Court judges will uphold the Supreme Court of Appeal's ruling. If this is done, it will set a precedent to the way in which the undisciplined, often criminal, behaviour of protesters is treated, necessitating trade unions or protest action organisers to instil discipline in their members, instead of having to pick up the bill for the damage they cause. But irrespective of what the outcome is, ensure that you have the necessary insurance which includes Sasria cover.

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