



By
Alan Rutkin



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Battle Lines

The 'war risk' exclusion has become inclusive of many types of unrest.

Is it a "violent uprising" if the uprising people are the victims of violence?

My first contact with the "war risk" exclusion was personal.

I was planning to visit Israel in the summer of 2006, and Israel and Hezbollah started fighting. I cancelled my trip and made a claim under my vacation insurance, since it covered cancellations prompted by terrorist activity. My insurer disclaimed based on the war risk exclusion.

This past winter, we saw fighting in several Middle Eastern countries. I wonder whether the war risk exclusion will be invoked and upheld. In fact, Tunisia, Egypt, and Libya—least-violent revolt to most-violent—seem to provide a neat continuum of examples for considering this question.

"War" exclusions typically bar coverage for damages "arising, directly or indirectly" out of:

- (a) War, including undeclared or civil war.
- (b) Warlike action by a military force.
- (c) Insurrection, rebellion, revolution, usurped power or action taken by a governmental authority in hindering or defending against any of these.

At what point does a conflict rise to the level of falling within this provision?

Libya is the easiest situation to consider. There, the military fired heavy weapons and deployed aircraft. The circumstances arguably fell within all three possible bases for the exclusion: there was "war," "warlike action by a military force" and "rebellion." The exclusion solidly applies.

The Libyan conflict also seemingly constitutes a civil war. Courts interpreting "civil war" have not limited this term to circumstances

with two formal governments and uniformed soldiers, as in the American Civil War. In a case considering the 1975 conflict in Lebanon, *Holiday Inns v. Aetna*, a federal district court found that civil war was a circumstance in which individuals "commenced hostilities against their former sovereign" and the sovereign "treats them as insurgents." Libya certainly falls within that definition.

In Egypt, the circumstances were more complicated. The military was deployed, but reportedly acted as peacemakers rather than combatants. The public occupied certain areas, and violent encounters took place. Did the public unrest rise to the level of "insurrection, rebellion, [or] revolution"?

A leading case on this issue is *Pan American World Airways Inc. v. Aetna Casualty & Surety Co.*, from the federal district court in New York, way back in 1974. There the court was considering whether a war-risk exclusion applied to an airline hijacking. The court ruled that an "insurrection" means "(1) a violent uprising by a group or movement (2) acting for the specific purpose of overthrowing the constituted government and seizing its powers." In Egypt, the protestors were physically occupying areas to demand President Hosni Mubarak's ouster. This seems to fit within the court's definition of "insurrection."

Tunisia presents the toughest call. The military arguably restrained itself and did not engage in "warlike action." But the Tunisian revolution was not bloodless. The military used live ammunition, and an unknown number of Tunisians died. But, is it a "violent uprising" if the uprising people are the victims of violence rather than the violent actors?

The moral of the story mirrors what I learned after cancelling my 2006 visit to Israel: The war risk exclusion applies to circumstances that fall short of traditional notions of war.

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