## RAJENDRA PRASAD BROS LTD v FAI INSURANCES (FIJI) LTD (HBC0205 of 2001)

HIGH COURT — CIVIL JURISDICTION

PATHIK J

19 May 2004

**Insurance — general insurance — loss or damage to property — whether Defendant liable to indemnify Plaintiff — whether excluded events under insurance policy applicable — Insurance Law Reform Act 1996 s 25.**

Rajendra Prasad Brothers Ltd entered into a contract of insurance with FAI Insurance (Fiji) Ltd (the Defendant) against loss or damage covered by Policy No 325. On 19 May 2000, the Plaintiff's shop was destroyed by fire caused by the riot and looting of separate groups of people after the Speight group attempted to overthrow the government. As a result, the Plaintiff claimed that it had suffered loss of more than $3 million and sought indemnification from the Defendant under the insurance policy.

The Defendant declined to indemnify the Plaintiff's loss on the property on the ground that the events that took place on 19 May 2000 were considered as one or more of the exclusionary items set out under cl 5.1(b) of Policy 325. The Defendant claimed that the damage suffered by the Plaintiff was indirectly caused by or resulted from the excluded events under the policy which are insurrection, mutiny, rebellion or usurped power thus negating the Defendant's liability to the Plaintiff.

The Plaintiff submitted that the excluded events did not apply because the rioters and looters were a different group of people from the Speight group who staged a coup to overthrow the government. Based on those circumstances, according to the Plaintiff, there was no causal connection between the rioters and the Speight group and other groups to involve them to the events that took place in the parliament and that relief can be granted under s 25 of the Insurance Law Reform Act 1996.

The issues were: (1) whether or not the Defendant was liable to indemnify the Plaintiff and; (2) whether the exclusion clause of the policy was applicable considering the events that took place in parliament.

**Held** — (1) No mutiny, rebellion, revolution or insurrection took place so that the Defendant was not liable to indemnify the Plaintiff under the exclusion clause of insurance policy because there was no causal connection between the action of Speight and his group and the loss or damage suffered by the Plaintiff. Instead, the events that took place and caused damage to the Plaintiff's property was due to riot and looting. Thus, the exclusion clause was not applicable and Defendant was liable to indemnify the Plaintiff for the loss caused by malicious act, theft and fire caused by the riot.

**Cases referred to**

*Suresh Kumar Singh v Sun Insurance Co Ltd* [2001] FJHC 120, applied.

*Chandrika Prasad v Republic of Fiji and Attorney-General of Fiji* [2000] FJHC 121; *Chappel v Hart* (1998) 195 CLR 232; 156 ALR 517; [1998] HCA 55; *Grell-Taurell Ltd v Caribbean Home Insurance Co Ltd* [2002] Lloyds Rep 655; *Lindsay and Pirie v General Accident, Fire and Life Assurance Corp Ltd* [1914] SAR 574; *New Zealand Insurance Co Ltd v Harris* [1990] 1 NZLR 10; *Pillay v General Insurance Co* [1985] LRC (Comm) 162; *Republic of Fiji v Prasad* [2001] NZAR 385; *Reverend Akuila Yabaki v President of the Republic of the Fiji Islands* [2001] FJHC 116; *Reverend Akuila Yabaki v President of the Republic of the Fiji Islands* [2003] FJCA 2 [2003] FJCA 3; *Yatulau Co Ltd v Sun Insurance Ltd* [2001] FJHC 205, cited.

*Chandrika Prasad v AG* Civ App No 78/2000; *Curtis & Sons v Mathews* (1919) 1 KB 425; *Field v Metropolitan Police Receiver* (1907) 2 KB 853; [1904–7] All ER

Rep 435; *National Oil Co of Zimbabwe v Sturge* [1991] 2 Lloyds Rep 281; *R v Grant* [1957] 1 WLR 906; [1957] 2 All ER 694; *Re H (Minors)* [1996] AC 563; [1996] 1 All ER 1; [1996] 2 WLR 8; *Spiney's (1948) Ltd v Royal Insurance Co Ltd* (1980) 1 Lloyd's Report 406, considered.

*B. C. Patel* for the Plaintiff

*F. Haniff* for the Defendant

**Pathik J.**

**The claims**

By *originating summons* dated 17 May 2001 Rajendra Prasad Brothers Ltd, (the Plaintiff) has sued Fai Insurances (Fiji) Ltd (the Defendant) seeking the determination of the court on the following questions (as per the said summons):

1. A declaration that upon the true construction of the insurance policies Nos 325, 326 and 332 (collectively "the policy") issued by the Defendant, FAI Insurances (Fiji) Limited, as insurer to the Plaintiff, Rajendra Prasad Brothers Limited, as insured the Defendant is liable to indemnify the Plaintiff for the loss or damage caused by:
2. 
   (a) malicious act;
   (b) theft;
   (c) fire,

   arising out of any one, or combination of:
   (a) a riot;
   (b) civil commotion;
   (c) terrorism;
   (d) vandalism;

   that occurred in the city of Suva on 19 May, 2000.
3. A declaration that on the true construction of the policy general exclusion clause 5.1(b) of the printed conditions ie:

   5.1 This insurance does not cover any loss or damage occasioned by or through or in consequence or indirectly, or any of the following occurrences, namely;

   (a) …

   (b) Mutiny, civil commotion assuming the proportions of or amounting to a popular rising, military rising, insurrection, rebellion, revolution, military or usurped power, or any act of any person or persons acting on behalf of or in connection with any organisation, the objects of which include the overthrowing of influencing of any de jure or de facto government by terrorism or by any violent means.

   is not applicable to the circumstances of this claim and the Defendant is wrong to rely upon it to decline liability and refuse payment.
4. An order that the Defendant do pay to the Plaintiff's mortgagee, Westpac Banking Corporation, Lautoka branch, the claimed sum of $3,512,036.00 or so much thereof as is not in dispute, together with interest thereon at the rate charged to the Plaintiff by its mortgagee since the 19 day of September, 2000 (or from such later date as may seem just to this Honourable Court) to the date of payment.
5. Further or other relief.
6. The Defendant pay to the Plaintiff costs of and incidental to this proceeding on an indemnity basis.

**Background to the case**

The background facts are that the Plaintiff's shop at the corner of Struan and Robertson Roads, Suva was alleged to have been rioted and looted and destroyed by fire at about 1.30 pm on 19 May 2000.

The Plaintiff says that it suffered loss in excess of $3 million as a result of that destruction.

The Plaintiff was insured with the Defendant company against loss or damage from, inter alia, malicious act, riot, civil commotion and terrorism under Policy No 325. The claim is under Policy Nos 325, 326 and 332 but counsel states that determination under Policy 325 will dispose of the entire claim.

The Defendant has admitted paras 1–13 and 19–27 inclusive of the first affidavit of Rajendra Prasad, company director, sworn 16 May 2001.

These *admissions in summary* are (as in Plaintiff's written submission at p 2–3):

(a) The Plaintiff had a valid insurance cover on 19 May 2000 for risks, inter alia, of malicious act, riot, civil commotion and sabotage & terrorism.

(b) The Plaintiff's shop at the corner of Struan and Robertson Roads, Suva was rioted, looted and destroyed by fire at 1.30 pm on 19 May 2000. That destruction has caused the Plaintiff substantial loss, in excess of $3.5 million.

(c) On 22 May 2000 notice of loss was given to the Defendant by the Plaintiff's insurance brokers, Marsh.

(d) The Defendant appointed GAB Robbins, on 22 June 2000, to assist in the adjustment of the loss sustained "by the Plaintiff by the events of 19 May 2000".

(e) On 17 July 2000 the Defendant declined the claim in reliance on printed general exclusion in cl 5.1(b) of the policy (see Ex B, first Prasad affidavit).

In terms of the policy the Plaintiff lodged its claim but it was declined by the Defendant on reliance of the said *clause 5.1(b)* of the printed general conditions in the policy.

The Defendant opposes the Plaintiff's claim objecting to the declarations and orders sought on the grounds stated below through its counsel in its written submissions (p 3) thus:

The Defendant submits that the events of the morning of 19 May 2000, specifically, the march through the streets of Suva, the entry into parliament by armed gunmen and the attempted and/or overthrowing of the then government amounted to one or more of the exclusionary items set out in clause 5.1(b) of Policy 325, clause 6(1)(b) of Policy 326 and 7.12 of Policy 332.

The Defendant further submits that it properly declined to indemnify the Plaintiff as the damage suffered by the Plaintiff was at least indirectly occasioned by or through or in consequence of the events referred to above that is, the march through the streets of Suva, the entry into parliament by armed gunmen and the attempted and/or overthrowing of the then government.

**Defendant's submission**

It is Mr Haniff's submission on behalf of the Defendant that the Defendant knows that in view of the fact that the Defendant has perhaps declined to indemnify the Plaintiff it will have to establish that (as in its submission at p 4):

(i) the events of 19 May 2000, specially, the entry into Parliament by armed gunmen and the attempted and/or overthrowing of the then government, amounted to any one or more of the exclusionary items in Clause 5.1(b); and

(ii) if (i) above is established, whatever damage that was suffered by the Plaintiff was at least indirectly as a result of one of those exclusionary items.

(iii) The Defendant accepts that not all the exclusionary items referred to above will be applicable on the facts of the present case. The Defendant will not rely on the following exclusionary items in 5.1(b): Civil commotion assuming the proportions of or amounting to a popular rising, military power, military rising, revolution and any act of any person or persons acting on behalf of or in connection with any organisation, the object of which include the overthrowing or influencing of any de jure or de facto government by terrorism or by any violent means.

The Defendant has to establish that the damage suffered by the Plaintiff was *indirectly caused* by *any one* of the following exclusionary items of clause 5.1(b):

(i) *Mutiny*; (ii) *insurrection*; (iii) *rebellion* and (iv) *usurped power*

The Defendant also accepts that the onus is on it to prove that the exclusion clause applies (vide *Suresh Kumar Singh v Sun Insurance Co Ltd* [2001] FJHC 120) at 3 (*Suresh Kumar Singh*). The learned counsel then deals with the various heads of the exclusion clause as stated below.

Mr Haniff goes at great lengths dealing with the taking over of parliament by George Speight and his supporters and refers to certain passages from cases arising out of the events of 19 May 2000. The cases he referred to were: *Chandrika Prasad v Republic of Fiji* [2000] FJHC 121 at 17, *Republic of Fiji v Prasad* [2001] NZAR 385 (Reported NZAR at 385), *Reverend Akuila Yabaki v President of the Republic of the Fiji Islands* (unreported, Civ Action No HBC0119 of 2001S, Scott J), and *Reverend Akuila Yabaki v President of the Republic of the Fiji Islands* [2003] FJCA 2, Lordships Barker, Ward and Davies).

He then refers to George Speight's *conviction* for treason on *20 February 2002* and the overt acts of treason to which he pleaded guilty.

With reference to the definitions of the words "*mutiny*", "*insurrection*" and "*rebellion*" and "*usurped power*" he submits that the actions of Speight and his supporters on 19 May 2000:

(i) constituted collective defiance or disregard of authority or refusal to obey authority: See Overt Acts 1, 2, 3 and 5.

(ii) constituted an organised and violent uprising with the object of trying to overthrow or supplant the government as its main purpose. These actions were a rebellion or, at the very least, insurrection. George Speight's expressed intent was to force a change of government and did in fact attempt to supplant the government by forming an illegal government styled the 'Taukei Civilian Government' by acts of violence: See Overt Acts 1, 2, 3, 4 and 5.

(iii) Arrogated himself the power of lawmaking that properly belonged to the People's Coalition Government: See Overt Acts 3, 4 and 5.

On these submissions he urges the court to find *any one* of the following: mutiny, insurrection, rebellion or usurped power in terms of the said clause 5.1(b) of the policy. He says that cases of *Yatulau Co v Sun Insurance* [2001] FJHC 205 (*Yatulau*) did not decide as alleged by the Plaintiff that what happened in Suva City on 19 May 2000 was a riot and not "rebellion" or "insurrection" or "usurped power". He says that those cases can be distinguished from the present case. In *Yatulau* he says that there was no issue of any exclusion clause. In *Suresh Kumar Singh* he says that the exclusion provision differed markedly from those in the present action.

Counsel further submits that it is a fundamental rule of insurance law that the insurer is only liable for losses proximately caused by the peril covered by the policy: *MacGillivray on Insurance Law* 9th ed, at 451. But then he submits that the word "indirectly by" in Policy 325 displaces the operation of proximate clause rule.

The facts and circumstances relating to the events of 19 May 2000 are contained in the various affidavits filed by the Plaintiff and Defendant.

Mr Haniff refers to parts of the said affidavits and also to the affidavit evidence of James Datta and Imraz Iqbal Ali.

Mr Haniff outlined what happened at government house gate and at parliament. It was after 11.30 am that shop and businesses in Suva City "*became a free for all, the situation degenerated in chaos with independent looting taking place*" after the insurrection. It was at 1.30 pm that the Plaintiff's premises were looted and set on fire.

Counsel submits that "*the inference to be drawn from the events is that the happening of the coup at the very least indirectly gave rise to the situation in which the looting could occur*".

He further submits that the evidence "*would leave it quite unreasonable to conclude other than that the riot was an indirect consequence of the tragic and horrible things that has happened and were happening in Parliament*".

Mr Haniff relied heavily on the case of *Grell-Taurell Ltd v Caribbean Home Insurance Co Ltd* [2002] Lloyds Rep 655 CA Trinidad; *Spinney's (1948) Ltd v Royal Insurance Co Ltd* [1980] 1 Lloyd's Rep 406 *Spinney's case (infra)* and *Pillay v General Insurance Co* [1985] LRC (Comm) 162, Supreme Court of Seychelles.

Counsel submits that the looting in Suva City started after the news of the insurrection spread in the city.

He wants the court to find that the damage suffered by the Plaintiff was at least indirectly caused by, or resulted from insurrection, mutiny, rebellion or usurped power. Therefore he says that the case falls within exclusion 5.1(b) of the policy and the Defendant is not liable to indemnify the Plaintiff under the policy.

On "*terrorism*" contrary to what Mr Patel says the Defendant's counsel states that there is no inconsistency between the *terrorism cover and clause 5.1(b)*. The difference is that the exclusionary items specified in 5.1(b) allowed political ends by force and not by fear.

The Defendant's counsel says that the cover is in the following terms:

> *The Policy extends to cover damage to Insured Property directly caused by Sabotage or Terrorism.*

Terrorism means use of violence for political ends and includes any use of violence for the purpose of putting the public in fear.

Further, on *clause 5.1(b)* counsel submits as follows:

> The insurance *does not cover any loss* or damage occasioned by or through or in consequence of or indirectly by, any of the following occurrences, namely:…" If the Defendant proves that the damage was caused indirectly by the mutiny, insurrection, rebellion or usurped power then the Plaintiff cannot recover.
>
> In any event, there is no evidence before this Court that establishes that the actions of Speight and his supporters comprised "acts of terrorism". The evidence before the Court clearly establishes that Speight and his supporters acted to overthrow the lawful Government, and thereby committed at least insurrection. In particular there is no

> evidence that establishes that Speight and his supporters committed acts intended or calculated to create a state of terror in the minds of particular persons, or a group of persons or the general public.
>
> Similarly there is no evidence before the Court to conclude that the actions of the looting crowd constituted acts of terrorism. No evidence establishes that the looters "used violence for the purpose of putting the public or a section of the public in fear and/or for political ends".
>
> Further, it is irrelevant whether the conduct of Speight and his followers comprised "acts of terrorism". It is not suggested by the Plaintiff that George Speight and his supporters were the direct cause of the damage; indeed, the Plaintiffs have been at pains to disassociate the looters from Speight and his supporters. The onus is on the Plaintiff to prove that the people who *directly caused* the damage, i.e. the looters, were committing acts of terrorism. There is no evidence before the Court that establishes the looters were terrorists.

He concludes by saying that s 25 of the Insurance Law Reform Act 1996 has no application to the instant case.

Counsel's argument is that s 25 as it stands is incomprehensible because there are words that are clearly missing, the end result being that the section is incapable of being assigned any sensible meaning.

He further submits that the Plaintiff is not entitled to raise this issue without pleading it.

Mr Haniff refers to the leading case on the interpretation of s 11 in the New Zealand case of *New Zealand Insurance Co Ltd v Harris* [1990] 1 NZLR 10. The said s 11 is similar to the said s 25. He sets out in his submission the *two-step inquiry* which the Court of Appeal held that s 11 contemplates where the contract of insurance excludes or limits the insurer's liability on the happening of certain events or the existence of certain circumstances.

Counsel says that there is no evidence before the court to make a finding on either of the *two-steps* prescribed by the New Zealand Court of Appeal.

Therefore, he says that the Plaintiff has not made out any case for relief under s 25 of the Insurance Law Reform Act 1996.

**Plaintiff's submission**

The learned counsel for the Plaintiff, Mr BC Patel submits that under O 28 r 2(4) of the High Court Rules 1988, the Defendant was required to disclose its defence. All it did in support of its case on exclusion clause 5.1(b) is produce two "*Fiji Sun*" newspaper articles exhibited to Fimone's affidavit with bold assertions, without supporting evidence by Fimone. Counsel says that these are hearsay and little or no weight should be given for the purpose of proving *causation.*

Mr Patel submits that the fact of *Speight's conviction* on *18 February 2002* on his own plea of guilty do not establish *causal connection* between the actions of Speight and the Plaintiff's loss.

Counsel submits that (as in p 11 of Plaintiff's submission):

> The eleventh overt act shows that Speight pleaded guilty to "unlawfully incite, aid and abet, counsel and procure various acts of looting, rioting and breach of the peace *by other persons unknown* in the course of an armed insurrection". George Speight did not plead guilty to all looting in Fiji on 19 May 2000 but only to some of it ("*various* acts of looting"). There is no evidence that "the various acts of looting" included *all* the looting in Suva city or more importantly that it included the looting at Plaintiff's shop. *It doesn't state that the looting to which Speight pleaded guilty included any or all the looting in Suva city*. No inference can be drawn to link the Plaintiff's loss.

Mr Patel submits that the evidence before this court supports the finding in the two High Court insurance claim cases of *Suresh Kumar Singh* and *Yatalau* that there was a *riot* in Suva on 19 May 2000 and that the rioters looted the Plaintiff's shop. There is no evidence to support a finding that one of the excluded events occurred on 19 May 2000 or that there was any causal connection between an excluded event and the Plaintiff's loss.

Counsel referred to the affidavit evidence of Mr James Datta and Mr Imraz Iqbal Ali which revealed, inter alia, that there were *three separate groups:* the *Speight group*, the *marchers* and the *rioters and looters*. The riot and looting started at Tappoo's shop at 1 pm and that rioters and looters moved to DB Diamond store and then around Nina Street including the Plaintiff's shop.

Mr Patel submitted that the excluded events do not apply in this case. He said that the rioters and looters were a different group from Speight and his supporters. There is no evidence that any of them have been charged for treason. There is no evidence of any *causal connection* between the rioters and Speight group and other groups to make them part of the events that occurred in parliament. He submits that whatever occurred elsewhere in the city was merely background, having no demonstrated causal link or relevance to the Plaintiff's loss.

***Act of terrorism***

As far as *terrorism* is concerned counsel says that a specific terrorism cover was taken out by the Plaintiff. Such cover is normally not provided by the standard policy wording.

The "terrorism" cover insures against loss or damage caused by "*use of violence for political ends and includes any use of violence for the purpose of putting the public or any section of the public in fear*".

***Section 25 of the Insurance Law Reform Act 1996***

Counsel submits that if there was a causal connection between the excluded event and the loss then evidence shows, inter alia, that such connection was tenuous.

Accordingly, he says, the court can grant relief against the exclusion clause in the policy under s 25 of the Insurance Law Reform Act 1996.

Mr Patel dealt with the affidavit evidence produced by the Defendant.

He submits that the Defendant relies on the two newspaper articles referred to in the affidavit of Fimone. These articles, he says, do not establish causal connection.

Counsel submits that as to the article of 20 May 2000 the reporter Ms Hicks has rejected Fimone's statement. There is no suggestion in that article that the march and the subsequent disturbances comprised a well "*orchestrated plan*" to topple the government of the day.

He further submits that there is no causal connection between the excluded event and the loss in Tora's statement of 2 August 2000 when he is reported as saying that

> "*the march was used as a decoy for the armed overthrow of the Government of the day*". It is made clear when Tora said in the same article that "*they did not have a hand in the rioting and burning that followed*".

## Consideration of the issues

### *Issues for determination*

The issues for court's determination are as follows (as seated in the pre-trial conference minutes):

> Did any of the excluded events occur on 19 May 2000, and if so, which one and where?
>
> Was the Plaintiff's loss or damage "occasioned through or in consequence *or indirectly of*" any of the excluded events?
>
> If the actions of George Speight and his group who took over Parliament and held the Prime Minister and others hostages "indirectly occasioned" the loss to the Plaintiff then was that loss also caused by an "act of terrorism" as defined in the policy?
>
> Does the terrorism cover provided by the *specification clause* of the policy prevail over the *printed* exclusion clause 5.1(b)?
>
> If the Plaintiff's loss or damage was occasioned *indirectly* by an excluded event then should the Plaintiff be granted relief under s 25 of the Insurance Law Reform Act 1996 because such excluded event was not the proximate cause and had not materially contributed to that loss or damage?
>
> Should the Court order payment of the admitted amount of $2,445,203.00?
>
> Should the Defendant pay interest, and if so, at what rate and for what period?

### *Burden of proof*

The burden of proof is on the Defendant to prove that the exclusion clause applies to this case.

The Defendant is required to, on a balance of probabilities, prove that the following two limbs of the exclusion clause are satisfied:

(a) that there was a mutiny, rebellion, revolution, insurrection or usurped power in Parliament at 1.30 pm on 19 May 2000; *and*

(b) that the Plaintiff's loss or damage was "occasioned by or through or in consequence or indirectly of" one or more of those occurrences.

### *Standard of proof*

In this case in so far as it is relevant to this action, the Defendant states that one of the excluded events of *mutiny*, *revolution*, *rebellion*, *insurrection* or *usurped power* occurred in Suva on 19 May 2000.

These are serious allegations and hence strong evidence is required to be produced to prove even on a balance probabilities.

The following passage from the judgment of Lord Nicholls in *Re H (minors) (sexual abuse: standard of proof)* [1996] AC 563 at 586; [1996] 1 All ER 1 at 16 sums up the requirements very succinctly:

> The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability. Fraud is usually less likely than negligence. Deliberate physical injury is usually less likely than accidental physical injury. A stepfather is usually less likely to have repeatedly raped and had consensual oral sex with his under age stepdaughter than on some occasion to have lost his temper and slapped her. Built into the preponderance of probability standard is a generous degree of flexibility in respect of the seriousness of the allegation

Although the result is much the same, this does not mean that where a serious allegation is in issue the standard of proof required is higher. It means only that the inherent probability or improbability of an event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred. The more improbable the event, the stronger must be the evidence that it did occur before, on the balance of probability, its occurrence will be established. Ungoed-Thoms J expressed this neatly in *Re Dellow's Will Trusts* [1964] 1 WLR 451 at 455; [1964] 1 All ER 771 at 773: "The more serious the allegation the more cogent is the evidence required to overcome the unlikelihood of what is alleged and thus to prove it" provides a means by which the balance of probability standard can accommodate one's instinctive feeling that even in civil proceedings a court should be more sure before finding serious allegations proved than when deciding less serious or trivial matters."

***Findings***

I have set out hereabove in considerable detail the helpful submissions made by both counsel.

I must say at this juncture that bulk of the *arguments* which have been so well and comprehensively put forward by Mr Patel are *accepted by me* in preference to those of Mr Haniff. Hence there is no need for one to repeat what Mr Patel said but to summarise their comment on them and make some findings on the issues.

The learned counsel for the Defendant, Mr Haniff did put up a good fight in support of his client's case. However, on the affidavit evidence produced he was having an uphill battle.

From the affidavit evidence before me I find that the Defendant has not discharged the burden of proof that lies upon it.

The main issue in this case is whether the exclusion clause 5.1(b) of the policy applies or not.

None of the occurrences, or any one of them, namely, *mutiny*, *revolution*, *rebellion* or *insurrection* or *usurped power* occurred in this case to enable the Defendant to escape liability under the policy.

There was *no mutiny*. In *R v Grant* [1957] 1 WLR 906 at 908; [1957] 2 All ER 694 at 696 *Lord Goddard* referred to the definition of "*mutiny*" in *Manual of Military Law (7th Ed)* which is as follows:

> … "mutiny" implies collective subordination or combination of two or more persons to resist or to induce others *to resist military authority*.

Further in *Pillay* at 165 the Supreme Court of Seychelles adopted the definition of "mutiny" in the *Shorter Oxford Dictionary*, namely;

> means open revolt against constituted authority; revolt of soldiers or sailors against their officers. To rise in revolt against; *to refuse submission to the lawful command of a superior, especially in the military and naval service*.

There is no evidence here of refusal to obey command; indeed there is no evidence that a command was issued.

On "*revolution*", in *Chandrika Prasad v AG* Civ App No 78 of 2000 (*Chandrika Prasad*), the Fiji Court of Appeal said this of a "revolution" (decision March 2001):

> We consider that there was a purported overthrow of the Constitution and its replacement by the establishment, first of military rule and, secondly, of the Interim Civil Government Whether what happened can be characterised as a "revolution" or not is probably a matter of choice of words. We are attracted to the definition of

"revolution" in Brookfield (op. Cit.) at 13 (*FM Brookfield's Waitangi & Indigenous Rights Revolution, Law and Limitation* (1999, Auckland University Press):

> For the purposes of a constitutional theorist (though one with practical concerns as well), a revolution may be widely defined as the overthrow and replacement of any kind of legal order, or other constitutional change to it — whether or not brought about by violence (internally or externally directed) — which takes place contrary to any limitation or rule of change belonging to that legal order.

In *Chandrika Prasad* the court went on to say:

> Not all revolutions are successful. We find that this one was not, for the reasons to be discussed later. Nor are all revolutions on the grand scale of the French Revolution or the Bolshevik Revolution in Russia. Nor are all revolutions "glorious", in the sense of ending the reign of a tyrant or replacing a repressive regime. Nor do all revolutions involve bloodshed.
>
> In this case, there was a purported change in the legal order when the Commander decided to abrogate rather than suspend the Constitution on 29 May; he reinforced this change when, he later chose to install the Interim Civilian Government which has purported to govern ever since…

From these statements it can be seen that there was no revolution on 19 May 2000. There is no evidence that Speight and his group had replaced or attempted to replace the Constitution on 19 May 2000.

On "*rebellion*" and "*insurrection*", in *National Oil Co of Zimbabwe v Sturge* [1991] 2 Lloyds Rep 281 at 282 Saville J said

> "Rebellion" and "insurrection" have somewhat similar meanings to each other. To my mind, each means that organized and violent internal uprising in a country with, as a main purpose, the object of trying to overthrow or supplant the government of that country though "insurrection" denotes a lesser degree of organization and size than "rebellion".

Also, in *Lindsay & Pirie v General Accident, Fire & Life Assurance Corp Ltd* [1914] SAR 574 the South African Court of Appeal held that insurrection meant a rising of the people in open resistance against established authority with the object of supplanting it.

On "*military*" or "*usurped power*", in *Curtis & Sons v Mathews* (1919) 1 KB 425, Bankes LJ observed (at 439) that:

> Usurped power seems to me to mean something more than the action of an unorganised rabble. How much more I am not prepared to define. There must probably be action by some more or less organised body with more or less authoritative leaders.

As stated in *Spinney's case* ( at 439) to constitute "usurped power" it "was the arrogation to itself by a group of the proper law-making and law-enforcing functions of the State". No such situation existed in this case. I agree with Mr Patel that the critical time for determination of the question is the time of rioting and looting of the Plaintiff's shop, that is, at 1.30 pm on 19 May 2000. At that time the only event that occurred was the takeover of parliament and holding the *Prime Minister* and certain parliamentarians hostage. Speight and his supporters had not at that time or any time "*arrogated to themselves*" the function of the state referred to above to have "*usurped power*".

As submitted by Mr Patel, for the Plaintiff causation in fact must be decided in the light of all the circumstances and probabilities of the particular case. Causation in contract is analogous to that in tort: *Chappell v Hart* (1998) 195 CLR 232 at 255; 156 ALR 517 at 533; [1998] HCA 55 Gummow J.

As to proof of *sufficient causal connection* the following quotation from the judgment of Mustill J in *Spinney's case* (where there was a reverse burden of proof) I consider pertinent to cite in considering the issues before me:

> I now turn to the question whether there was a sufficient casual connection between the operation of the excepted perils and the losses which I have described. The type of connection required is defined by the causation clause, and the mode of proof by the reverse burden clause.

It is important to note in this context the decisions in the two High Court cases, already referred to hereabove. They are *Yatulau* judgment — Byrne J) and (*Suresh Kumar Singh* case) judgment 24 July 2001 — Scott J). The cases relate to events of 19 May 2000.

In *Yatulau*, Byrne J dealt with the exclusion clause similar to the one before me. There the court found that the damage caused there was through a "riot".

In *Suresh Kumar Singh* case, Scott J found that there was no evidence before him "*that the looting which damaged the Plaintiff's premises was part of an attempted coup*". His Lordship agreed with *Byrne J* that the damage was as a result of *rioting* and *civil commotion*.

His Lordship Scott J (now Judge of Appeal) summed-up the position very well and I adopt it here. He said:

> In particular, there is nothing to show that the looting was planned or orchestrated by Speight or any of his lieutenants. While doubtless some of the looters may have sympathised with Speight the looitng was directed not at the organs of the State such as government offices or agencies but was directed at private businesses. The main object of the looting as was obvious from the television footage was to steal as much as possible as quickly as possible whether what was stolen was gold watches or frozen chickens.

On the affidavit evidence before me and on the authorities I find that there was *no causal connection* between the action of Speight and his group and the loss suffered by the Plaintiff.

I hold that this was a clear-cut case of "*riot*" as held in *Yatulau*. There Byrne J, referred to the case of *Field v Metropolitan Police Receiver* (1907) 2 KB 853 at 860; [1904–7] All ER Rep 435 where the Court of Appeal held that in order to constitute a riot five elements are necessary. They are:

1. number of persons three at least;
2. common purpose;
3. execution or inception of the common purpose;
4. an intent to help one another, by force if necessary against any person who may oppose them in the execution of the common purpose;
5. force or violence, not merely used in demolishing but displayed in such a manner as to alarm at least one person of reasonable firmness and courage.

I find that the proximate cause of the loss to the Plaintiff's shop was the *riot and looting* and not the event in parliament. There is *no causal connection* between those who rioted and looted the Plaintiff's shop and Speight and his supporters to make them part of the event which occurred in parliament or to be indirectly connected to the events in parliament. It is abundantly clear and I so find that there were *three separate groups*, viz Speight group, the marchers and the rioters and looters. As put by Mr Patel and I agree that the mere coincidence in point of time is insufficient to characterise the events at the Plaintiff's shop as having a similar character as those at the parliament.

A letter dated 2 October 2001 from the Assistant Commissioner of Police — Commercial Crime addressed to Parshotam and Co Solicitors in regard to "Looting of Tappoo's Store" on 19 May 2000 strengthens the Plaintiff's case clarifying as to which group was involved in the looting and rioting. The letter states as follows:

> We refer to your letter of 26 May 2001 and other communications and confirm that following extensive investigations the police are satisfied that the offences including rioting and looting etc that occurred at the Suva shop of Tappoo Ltd on 19 May 2000 were not the direct or indirect result of any organised political nature of flowing from the events in parliament on that day.
>
> *The police are satisfied that the motives behind the looters were for their own personal gain rather than any political cause. Some looters have been charged and convicted.*

**Conclusion**

The Defendant relies entirely on whether the damage suffered by the Plaintiff was indirectly caused by anyone of the exclusionary items, namely (i) *mutiny*, (ii) *insurrection*, (iii) *rebellion* and (iv) *usurped power*.

Having found as already stated hereabove and particularly having found that the damage suffered by the Plaintiff was as a result of riot and looting, the exclusion clause does not apply.

This interpretation of the exclusion clause in the policy is based on facts and law and also on the authorities referred to hereabove.

Having found as fact as I have done, no question of considering the matter of "terrorism", of which both counsel spoke, arises. The finding that it was riot which led to the damage caused to Plaintiff, answers the issues for determination by the court as stated already earlier in this judgment.

In the outcome, for the above reasons and on the interpretation of the exclusion clause 5.1(b) of the printed conditions in *Policy 325* and exclusion clauses in *Policies 326* and *332* arrived at by consideration of all the affidavit evidence as presented to this court and on the authorities, the Defendant is *liable to indemnify* the Plaintiff for the loss caused by *malicious act, theft* and *fire* which arose out of a *riot* in the City of Suva on 19 May 2000.

As per *GAB Robins New Zealand Ltd Report* dated 17 March 2003 being annexure PF1 to Peter Fimone's affidavit sworn on 20 March 2003 the net loss is stated as *$2,245,203* (it *should be $2,445,203.00* as there is an addition error). This amount the Defendant has *admitted*.

The report states:

> Our calculation of the loss is as follows. Please note that our figures are inclusive of VAT where we consider insurers are required to pay VAT in settlement of the claim.

| | | |
|---|---|---|
| Building Claim | | $546,107 |
| Contents Claim | | $250,000 |
| Special Limits Under Material Damage | | |
| For Claim Preparation | | $ 10,000 |
| Stock Claim | | $750,000 |
| Business Interruption | | $-*889,596* |
| Total $2,445,703 | | |
| Less Deductible Under Material Damage Policy | | $500 |
| | *Total Net* | *$2,245,203* |

The "final" assessment report of *Peter Faite Loss Management Ltd* is that the loss is in excess of $3.4 million.

However, since the Defendant has admitted $2,445,203, the Plaintiff is entitled to judgment for that amount.

The Plaintiff is *entitled to interest* pursuant to s 34 of the Insurance Law Reform Act 1996 from a date when it was unreasonable for the insurer to withhold payment, and such interest is payable to the date of payment of the judgment sum.

The said section provides:

> 34.-(1) Where an insurer is liable to pay to a person an amount under a contract of insurance or under this Act in relation to a contract of insurance, the insurer is also liable to pay interest on the amount to that person in accordance with this Section.
>
> (2) The period in respect of which interest is payable is the period commencing on the day as from which it was unreasonable for the insurer to have withheld payment of the amount and ending on whichever is earlier of the following days:
>
> (a) the day on which the payment is made;
>
> (b) the day on which the payment is sent by post to the person to whom it is payable.
>
> (3) The rate at which interest is payable in respect of a day included in the period referred to in sub-section (2) is the rate that is prescribed by regulation.

Under reg 2(1) of Insurance Law Reform (Interest Rates) Regulations 2004 (Legal Notice No 1 of 2004 dated 29 December 2003) the rate of interest is stated. It provides:

> 2.-(1) For the purpose of section 34(2) of the Insurance Law Reform Act 1996, the interest rate payable in respect of each day included in a period referred to in that section is *10% per annum.*

This action relates to the year 2003 and the above regulation came into force in 2004. In the absence of prescribed interest in 2003 the Plaintiff has asked for *9.25% per annum* interest which I allow.

**Orders**

*It is ordered* that the Defendant pay to the Plaintiff the admitted sum of *$2,445,203* with interest thereon at *9.25%* from *19 September 2000* to the date of payment. *And it is further ordered* that the Defendant pay to the Plaintiff costs which is to be taxed unless agreed. Judgment is therefore entered for the Plaintiff accordingly.

I shall now hear counsel to set a date for hearing to determine the balance of quantum claimed.

*Determination made.*