IN THE HIGH COURT OF SOUTH AFRICA

(WITWATERSRAND LOCAL DIVISION)

CASE N0: 05/29858

In the matter between:

SLABBERT BURGER TRANSPORT (PTY) LIMITED Plaintiff

and

SASRIA LIMITED Defendant

JUDGMENT

GOLDSTEIN J:

[1] In this trial the parties have presented me with an agreed statement of facts, the body of which reads *inter alia* as follows:

"1. The defendant issued to the plaintiff the SASRIA insurance policy with policy number ST/ME 9045227/05 ('the SASRIA policy').

2. The SASRIA policy consists of:

2.1 The policy wording, a copy of which is attached hereto marked 'A'.

2.2 ….

3 In terms of the SASRIA policy the defendant agreed to indemnify

the plaintiff in respect of damage to a Volvo FM12 truck tractor with registration number 406 SBH GP ('the truck') caused by the perils listed in the SASRIA policy

4 At all material times the plaintiff had an insurable interest in the truck.

5 The plaintiff carries on business as a transport contractor using *inter alia* the truck from a depot at Witpoort Agricultural Holdings Estates, Brakpan.

6 During February and March 2005 the plaintiff:

6.1 operated a fleet of approximately 350 trucks and other vehicles, which displayed the plaintiff's distinctive logo, and

6.2 employed approximately 500 drivers.

7 Some of the drivers employed by the plaintiff are members of the South African Transport and Allied Workers Union (SATAWU).

8 The plaintiff was a member of the Road Freight Employers Association ('RFEA')

9 During a period prior to 28 February 2005 the RFEA and SATAWU were involved in a process of negotiating wages to be paid to truck drivers, including the drivers employed by the plaintiff.

10 On 1 March 2005 the members of SATAWU, including the SATAWU members employed by the plaintiff, embarked on a lawful strike ('the strike').

11 As a result of the strike approximately half of the drivers employed by the plaintiff went on strike.

12 The drivers employed by the plaintiff who did not go on strike continued to work as drivers.

13 During the strike:

13.1 drivers who were not participating in the strike were

assaulted and threatened;

13.2 trucks were damaged by stones being thrown at them and being set fire to;

13.3 cargo being carried on trucks was looted;

13.4 the SAPS intervened to attempt to prevent the events listed in 13.1 to 13.3 from taking place.

14 0n 2 March 2005:

14.1 Abel Mtshweni, a driver employed by the plaintiff, who was not participating in the strike parked the truck at the Caltex truck stop facility at Leslie, in the Leandra area near Ogies, Gauteng ('the truck stop').

14.2 Three unidentified men, two of whom were wearing dark blue overalls of the same type as those worn by the plaintiff's drivers, purchased a small quantity of petrol, a phone card and a box of matches from the shop ('the shop') at the truck stop.

14.3 After the unidentified men left the shop the truck was on fire ('the fire').

14.4 The fire destroyed the truck.

14.5 The fire started when a quantity of flammable liquid was ignited on the front left side of the truck.

14.6 No-one saw who, or how, the flammable liquid was ignited.

14.7 The flammable liquid was not ignited publically.

15 The strike ended on 8 March 2005.

16 The value of the truck was R600 000,00 which is the amount the defendant will have to pay to the plaintiff if it is liable to do so.

17 The plaintiff alleges that:

17.1 The setting fire to the truck, and the damage thereto was caused by an act intended, calculated or directed to bring about or further a riot, strike or public disorder or constituted an attempt thereof.

17.2 The defendant is liable to pay to it R600 000,00 in terms of the SASRIA policy.

18 The defendant alleges that:

18.1 The setting fire to the truck, and the damage thereto, was not caused by any riot, strike or public disorder or any act which is calculated or directed to bring about a riot, strike or public disorder or any attempt thereat as contemplated in the SASRIA policy.

18.2 The truck was not damaged by a peril covered by the SASRIA policy.

18.3 The plaintiff's claim should he dismissed with costs.

19 The issue to be decided is: was the damage to the truck caused by a peril listed in the SASRIA policy."

[2] Annexure "A" to the statement includes the following terms of the SASRIA policy:

"**COUPON POLICY FOR SPECIAL RISK INSURANCE**

"In consideration of the prior payment of the premium ... the Company[1] will by payment or at its option by reinstatement or repair indemnify the insured[2] …up to an amount not exceeding the total sum insured … against loss of or damage to the property insured directly related to or caused by:

(i) any act (whether on behalf or any organisation, body or person, or group of persons) calculated or directed to overthrow or

1 The defendant
2 The plaintiff

influence any State or government, or any provincial, local or tribal authority with force, or by means of fear, terrorism or violence;

(ii) any act which is calculated or directed to bring about loss or damage in order to further any political aim, objective or cause, or to bring about any social or economic change, or in protest against any State or government, or any provincial, local or tribal authority, or for the purpose of inspiring fear in the public, or any section thereof;

(iii) any riot, strike or public disorder, or; (sic) any act or activity which is calculated or directed to bring about a riot, strike or public disorder;

(iv) any attempt to perform any act referred to in clause (i), (ii) or (iii) above;

(v) the act of any lawfully established authority in controlling, preventing, supporting or in any other way dealing with any occurrence referred to in clause (i), (ii), (iii) or (iv) above.

NOTE:

In this Coupon Policy, the term 'Public Disorder' shall be deemed to include civil commotion, labour disturbances or lockouts."

[3] Counsel are agreed that I may infer facts from those agreed upon. It seems to me clear that the purchase of the petrol and box of matches from the shop at the truck stop must have led to the fire which destroyed

the truck, which was being driven by an employee in defiance of the strike, and that, given the dress of two of the men, they must have been employees of the plaintiff. The fire occurred during the strike and was a violent act, similar to each of the incidents described in paragraphs 13.1–13.3 of the statement, and must have been intended, as each of those were, to extend the ambit of the strike. The igniting of the fire, and each of the actions constituting the conduct referred to in paragraphs 13.1–13.3 was an "act" which was "calculated or directed to bring about a … strike …" The words "to bring about a … strike .." are wide enough, and must have been intended, to cover the extension of the ambit of a strike. Clause (iii) stipulates "any act", and thus includes a single, isolated act calculated to cause a strike, and there is no reason to qualify this perfectly plain and simple meaning of the phrase. The loss of the truck was caused by such an act, triggering the defendant's obligation to indemnify the plaintiff against its loss.

[4] Counsel for the defendant referred me to an arbitration appeal award of 23 September 1998 dealing with a policy in substantially the same terms as the one with which I am concerned. He assures me that the award is in no way confidential. I see no reason why it should not have persuasive value. The case involved damages allegedly resulting from "labour disturbances",

and the three arbitrators[3] found that this expression meant "an overt disturbance of the public peace in defiance of authority, leading to physical damage …." and that such disturbances were "a species of public disorder …" The arbitrators were not concerned with a strike (or for that matter, with a lockout), but in the course of their award they expressed the following view:

> "It is, of course, correct that *'strikes'* and *'lockouts',* unlike riots and civil commotion, may be perfectly peaceful in nature and need not lead to actual violence. However, we do not consider that this justifies reading the Coupon Policies as covering, as a general category of risk, disturbances of labour relationships which do not entail disturbances of the public peace. The context in which cover is given in respect of *'strikes'* and *'lockouts'* suggests rather that, in these cases also, cover is directed to instances of public violence committed in the course or in consequence of strikes and lockouts and leading to physical damage of property:
>
> '*Clause (ii) deals with activities* by *a number of people acting together, not individuals. Although some strikes are lawful the fact that damage is caused introduces an element of unlawfulness, which is also the hallmark of a riot or public disorder. The activities are* (*also in the case of a strike where damage is caused) of a disorderly nature. In the context violence leading to damage is a necessary ingredient'.*
>
> per Van Dijkhorst J **in *South African Special Risks Insurance Association v Elwyn Investments (Pty) Ltd*** (unreported judgment in Case No.A3*70/93,*Transvaal Provincial Division)."

[5] The judgment of Van Dijkhorst J to which the arbitrators refer, was also relied upon by counsel for the defendant. Clause (ii) of the policy under consideration in that case is in substantially the same terms as clause (iii)

3 S F Burger SC, H W Trengove SC, and M Tselentis SC

of the policy I must interpret. Van Dijkhorst J, with whom Streicher J (as he then was), and Nugent J (as he then was), concurred, was dealing with damages allegedly caused by a "riot". The Full Court was accordingly not dealing with a strike. In the course of his judgment Van Dijkhorst J made the following statement regarding a strike which counsel for the defendant correctly concedes is obiter:

> "In my view a limitation of the ordinary meanings of the word 'riot' as given in the Oxford English Dictionary is to be found in the context of the clauses in the policy. Clause (ii) deals with activities by a number of people acting together, not individuals. Although some strikes are lawful, the fact that damage is caused introduces an element of unlawfulness, which is also the hallmark of riot or public disorder. The activities are (also in the case of a strike where damage is caused) of a disorderly nature. In the context violence leading to damage is a necessary ingredient."

[6] With respect, it seems to me that if the *dicta* I have quoted of the Full Court and the arbitrators express the view that the acts calculated to bring about a strike must be of a public nature they go too far. As I have indicated the requirements for liability for acts calculated to bring about a strike are satisfied even if not committed in public. In my view, the words "riot", "public disorder" and "civil commotion" clearly indicate large–scale public upheavals, and "labour disturbances" and "lockouts" which are "deemed" to be included under the term "public disorder" probably also entail an element of public behaviour or misbehaviour. Perhaps the word "strike" does too.

[7] The question with which I am concerned, however, is whether "an act … which is calculated or directed to bring about" one of the results tabulated in clause (iii) has to be committed in public or, put otherwise, whether such an act has to occur as part of a disturbance of the public peace. Neither the Full Court nor the arbitrators needed to deal with this question, or with this portion of the clause. The Full Court faced quite a different problem; in the words of Van Dijkhorst J: "The question to be answered is whether what has been described constitutes a 'riot' within the meaning of the policy." The appeal arbitrators also faced a different problem from the one which arises *in casu.* They had to deal firstly with a factual problem, and then, in their words, with "whether the loss/damage sustained by the appellants was directly related to or caused by labour disturbances within the meaning of the Coupon Policies."

[8] Counsel for the defendant referred me also to *London and Manchester Plate Glass Company, Limited v Heath* [1913] 3 K. B 411. In that case a large number of women broke windows simultaneously in different parts of London; there was no disturbance in the street and no public sympathy shown. And the damage was not shown to result from "civil commotion or rioting" – the phrase which the court had to interpret. I am, of course, not concerned *in casu* with either civil commotion or rioting, but with a single

act calculated or directed to bring about a strike.

[9] I have considered, and rejected, the possibility that the words “any act or activity which is calculated to bring about” ought to be given an extended meaning, to exclude acts not done in public, by the application of the *eiusdem generis* or *noscitur a sociis* rules (*E A Kellaway:* Principles of Legal Interpretation Statutes, Contracts and Wills 147, 152; *R H Christie*: The Law of Contract in South Africa 5th ed. 221-3), because to do so would be to fail to give effect to the obvious, plain and clear intention of the words. In this regard clause (iv) is significant: it goes so far as to include attempts to perform any of the acts mentioned in clause (i) (ii) or (iii) and among these are, of course, the acts I am concerned with in this case.

[10] It follows that the plaintiff’s claim must succeed. The parties are agreed that, if that is my finding, interest should run from the date of the summons – 21 December 2005.

[11] In the result:

The defendant is ordered to pay the plaintiff:

1. R600, 000.00,

2. Interest thereon at 15.5% per annum from 21 December 2005 to date of payment,

3. The plaintiff's costs of suit.

_____

E L GOLDSTEIN
JUDGE OF THE HIGH COURT

For the Plaintiff:	S M Alberts
Instructed by:	Pearce Lister & Company
For the First Defendant:	I P Green
Instructed by:	Webber Wentzel Bowens
Dates of Hearing:	26 February 2007
Date of Judgment:	6 March 2007