

**IN THE SUPREME COURT OF BELIZE, A.D. 2007**

**CLAIM NO. 215 OF 2006**

**ATLANTIC INSURANCE COMPANY  
F & G INSURANCE COMPANY LIMITED  
REGENT INSURANCE COMPANY LIMITED  
RFG INSURANCE COMPANY LIMITED  
UNITED INSURANCE COMPANY LIMITED**

**Claimants**

**BETWEEN AND**

**MINISTER OF FINANCE  
ATTORNEY GENERAL**

**Defendants**

—

**BEFORE** the Honourable Abdulai Conteh, Chief Justice.

Mr. E. Andrew Marshalleck, with Mrs. Naima Badillo, for the claimants.  
Mr. Derek Courtenay S.C. for the defendants.

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**JUDGMENT**

The 20<sup>th</sup> of April 2005 was, in a sense, a day full of suspense, anxiety and fear for the country. Sometime in the afternoon on that day a large crowd of persons, including school children, who had left their schools which were for the most part, on Princess Margaret Drive, started to converge on the Belcan Bridge just off the Flags Monument. The crowd also included trade unionists and their members and the general public. The crowd grew larger as time progressed. Not too long after, some members of the milling crowd spilled on to the centre of the bridge and vehicles were

placed thereon so as to obstruct the flow of traffic in either direction of the approaches to the bridge. Motor vehicle tires were set alit on the bridge.

2. Police officers valiantly tried to control the crowd and to remove the obstruction, both human and vehicular, in the centre of the bridge. There were some scuffles between the police and some members of the public.
3. A good part of the scenes on the Belcan Bridge was captured by television cameras of both Channels 5 and 7 for their news report. Copies of these were tendered in evidence and viewed in court.
4. As the crowd grew in number and the police struggled to assert control, portions of the crowd could be heard distinctly shouting *“To Albert Street, to Albert Street”* and some in the crowd were heard to say *“To Hofius, to Hofius.”*
5. Albert Street, is, of course, situated in the centre of the commercial and shopping section of Belize City, in downtown Belize City. Hofius is a general merchant store that sells sundry items and goods, including hardware, paint, household items, electrical fittings and equipment. It is situated in Albert Street, in the heart of Belize City and home to a number of stores and shops like Brodies Ltd., Romac’s, Gaylord and Venus Store.
6. The television footage showed to the court clearly showed that a number of the stores along Albert Street were pillaged and damaged. The footage showed the deployment of the Riot Squad with shields and in formation moving from one end of Albert Street to the other. It also showed the police trying to chase and apprehend persons who were clearly looters, as they had broken into some of the stores and were trying to make good their escape. A senior Police Officer had to fire into a store that had been broken into in order to warn off the looters and to effect their arrest.

7. It is not in dispute that a number of stores were broken into and looted on the evening of 20<sup>th</sup> April 2005. These stores suffered serious losses of stocks, wares, furniture and fittings. As a result of this, the various stores made claims on their insurance companies, the claimants in this case. The claims of the store owners were duly settled by the claimants. They in turn tried to have recourse, pursuant to the Riots Compensation Act, Chapter 358 of the Laws of Belize, to be reimbursed for the sums they had paid to their insured who had sustained losses as a result of the events on that fateful evening.
8. However, the claimants' attempts to recoup what they had paid out to their assured did not find favour with the defendants: see the letter from the claimants' attorneys dated 31<sup>st</sup> January 2006 and the reply thereto from the Legal Counsel in the Legal Department of the Ministry of Finance, dated 27<sup>th</sup> February 2006.

Issue for determination

9. This is the brief background that has given rise to the issue in this case which helpfully was agreed by the parties in their joint Memorandum of Issue. This was stated thus:

*“Whether or not persons who conducted themselves on the 20<sup>th</sup> April 2005 in the manner disclosed in the witness statements filed were persons riotously assembled within the meaning used by the Riots Compensation Act?”*

10. In my view therefore, the issue for determination is: *did the events of 20<sup>th</sup> April 2005 constitute riot such as to engage the provisions of the Riots Damage Act, in particular section 3 of the Act?*

## The Law

11. Section 3 of the Riots Compensation Act, (the Act) provides in terms as follows so far as is material for this case:

*“3(1) Where a house, shop or building has been damaged or destroyed or any property therein has been damaged, stolen or destroyed by any persons riotously assembled together, such compensation as mentioned in section 4 shall be paid to any person who has sustained loss by reason of such damage, stealing or destruction.*

*(2) In fixing the amount of such compensation, regard shall be had to the conduct of the person sustaining the loss, whether with respect to the precautions taken by him or his being a party or accessory to such riotous assembly or any provocation offered to the persons assembled, or otherwise before or during such riotous assembly.*

*(3) Where any person having sustained such loss has received, by way of insurance or otherwise, any such sum to recoup him, in whole or in part, for such loss, the compensation otherwise payable to him under this Act shall, if exceeding such sum, be reduced by the amount thereof, and in any other case shall not be paid to him, and the payer of such sum shall be entitled to compensation under this Act in respect of the sum paid in like manner as if he had sustained the loss.”*

Section 4 of the Act provides as follows:

*“4. All claims for compensation under this Act shall be made to the Minister, and upon such claim being made, the Minister shall inquire into the truth thereof, and shall, if satisfied, fix the compensation as appears just.”*

The phrase “riotous assembly” is defined in section 2 of the Act as meaning *“an assembly of rioters or of persons together with a purpose of committing a riot as defined by section (245) of the Criminal Code.”*

12. The offence of “riot” itself is created cryptically by section 226 of the Criminal Code as follows:

*“226 Every person who takes part in a riot is guilty of a misdemeanour.”*

And section 245 of the Code defines a riot in these terms:

*“245(1) If five or more persons together in any public or private place commence or attempt to do either of the following things, namely –*

- (a) To execute any common purpose with violence and without lawful authority to use such violence for that purpose, or*
- (b) to execute a common purpose of obstructing or resisting the execution of any legal process or authority, or*
- (c) to facilitate by force, or by show of force or of numbers the commission of any crime, they are guilty of riot.”*

13. Therefore in Belize to ground the offence of riot, the following elements must be established:

Five or more persons together in a public or private place commence or attempt to do any of the following things:

- a) try to execute or carry out any common purpose with violence and without lawful authority to use such violence for their common purpose, or
- b) carry out a common purpose of obstructing or resisting the execution of any legal process or authority; or
- c) facilitate by force, or by show of force or of their numbers the commission of any crime, then in any of these cases the persons will be guilty of the offence of riot.

These elements are not cumulative; any one of them will suffice.

14. Although no one is on trial for the offence of riot, and from the evidence in this case, no one has been charged with or convicted for this offence as a result of the events of 20<sup>th</sup> April 2005, it is in my view, nonetheless the duty of anyone deciding a claim for compensation arising out of those events and pursuant to the Riots Compensation Act, to determine, whether any of the elements I have mentioned above is satisfied. Of course, where there has been a successful prosecution for the offence of riot, establishing a claim would be that much easier. But where, as in the instant case, there has been no charge or prosecution for the offence of riot, it is the duty of the person or the Court deciding a claim for compensation, to determine whether the loss in respect of which it is made arises out of any of the elements or situations I have mentioned

above. This task, especially in the absence of a charge, prosecution or conviction for the offence of riot, can only properly, in my view, be done in the light of the available evidence flowing from the incident or incidents out of which the claim for compensation arises.

*The Rival Contentions*

15. The claimant insurance companies, having settled the claims of the insured businesses affected by the events of April 20<sup>th</sup> 2005, are now faced with a rejection of their claims pursuant to the Riots Compensation Act by the defendants on the basis that those events were not a “riot” within the meaning of the Act.

The word “riot” is itself a technical term of the criminal law and as such should be taken to bear the technical meaning that has been assigned to it.

16. I must record here my gratitude to both Mr. Derek Courtenay S.C. the learned attorney for the defendants and Mr. Andrew Marshalleck the learned attorney for the claimants, for their written submissions and advocacy in the course of which they took me through some of the case-law authorities on the meaning of “riot”. But I must enter a caveat here for these authorities concerned the old common law offence of riot which was applicable in England, but has now been replaced by a new statutory definition contained in section 1 of the United Kingdom Public Order Act 1986. And as MacGillvray on Insurance 10<sup>th</sup> Ed. (London Sweet & Maxwell 2003) points out *“The old authorities are ... not now of assistance in interpreting the term riot.”*

The learned authors of MacGillvray further note that the Canadian and American authorities adopt a more flexible approach in the interpretation

of the word “riot”: see in particular the case of Pan American World Airways Inc. v Aetna Casualty and Surety Co. (1973) 1 Lloyd’s Rep. 77, where US District Judge Frankel took serious issue with what had been put forward as the common law authorities on what a “riot” was, and took a critical view of such cases like London and Lancashire Fire Insurance Co. Ltd. v Bolands (1924) A.C. 836 which the learned District Judge referred to as “... *the fountain-head of the ancient concepts and ancient language.*” This case, I note with some bemusement, is relied upon by both attorneys for the parties – see the persuasive analysis of Judge Frankel at page 231 col. 1 to page 234 col. 1 in the Pan American case supra.

17. In any event, in Belize, both the offence and definition of “riot” are, as I have pointed out above, statutory. It is therefore, in my respectful view, within this statutory matrix, as a technical term of the criminal law, and in the light of the evidence in any particular case, that a more appropriate and relevant assessment and determination can be made as to whether a given situation is a riot or not.

#### The Evidence

18. Both sides tendered witness statements on which they relied. There were six statements for the claimants. But for evidential relevance in relation to the question of “riot” or “no riot” only two are germane. These are the witness statement by i) Mr. Rick Romero who at the material time was the news cameraman for ‘Channel 5’ TV Station and ii) by Fortunato Noble, the news cameraman for ‘Channel 7’ News Belize at the time. Video recordings of the scenes for the evening TV News the following day, that is, 21<sup>st</sup> April 2005, recounting events of 20<sup>th</sup> April 2005, were also made available to the court and played in court.

19. There were three witness statements for the defendants: i) by Assistant Commissioner of Police, Mr. Crispin Jeffries; ii) by Mr. Chester Williams, a Superintendent of Police and iii) by Mr. Anthony Rosado, a former Inspector of Police, who at the material time was Commander of one of the Public Order Unit (POU).

Determination

20. From the evidence in this case, I am satisfied that the concatenation of events on 20<sup>th</sup> April 2005, culminating in the loss and the claims which are the subject of these proceedings, was nothing short of a riot.
21. **First**, there was the undoubted riotous assembly of protesters on Belcan Bridge blocking its approaches from either direction.

**Secondly**, there was the setting of tires on fire by the demonstrators in the middle of the bridge and the throwing of stones at WASA building in the vicinity of the bridge.

**Thirdly**, the abortive attempts by the police to clear the bridge resulting in fracas between some protesters and the police.

**Fourthly**, the spilling over of some of the demonstrators from the Belcan Bridge to Albert Street and its environs. In the words of Mr. Romero, the TV cameraman: *“Mr. Krohn and I went to the corner of Albert and King Streets to videotape what appeared to be the move of a mob of people from the Belcan Bridge to Albert Street.”* This resulted in the pillage of stores in the area. In the words of the other eye-witness, the other TV cameraman Mr. Noble:

*“On or about 7:00 p.m. on 20<sup>th</sup> day of April 2005, I was sent to the corner of Albert and Orange Streets by Channel 7 ... to videotape what appeared to be the move of a mob of people from the Belcan Bridge to Albert Street.*

*Upon arrival at the corner of Albert and Orange Streets, I began my job of videotaping what was occurring.*

*There was a group of approximately 75 – 80 people comprising mostly young men on bicycles and or foot making their arrival on Albert Street from Orange Street.*

*These young men entered Albert Street and started looting several of the stores thereon, including Hofius Limited, Brodie’s, Gaylords, Venus, and Miami Fashions. They were also joined by others while making their way to Albert Street.”*

22. Moreover, I am unable to see how the police (in the witness statements from the defendants) could distinguish persons from Belcan Bridge from those in Albert Street. I am convinced that the looters in Albert Street came from the crowd of persons whose numbers were swelling with the passage of time on the Belcan Bridge. I find the eye-witness statements of the two TV cameramen more rational and believable on this point. They, unlike the police witnesses for the defendants, were not taking part in the events that day other than making a visual recording of them.
  
23. Also, almost contemporaneous with or spilling over from the crowd on the Belcan Bridge, a throng of persons literally ran amok in Albert Streets and its vicinity and set upon stores in the area and seriously looted them: can it really seriously be contended that this was only “burglary”, “handling

stolen goods” or “disorderly behaviour” as has been argued for the defendants?

24. Mr. Derek Courtenay S.C. for the defendants plausibly argued that the looting in itself does not amount to riot unless the conduct of the persons assembled amounts to a riot within the meaning of section 245 of the Criminal Code and that the term “riot” is not synonymous with looting. This indeed may well be so, for not every riot involves or results in looting. But with respect, looting has now become so associated with riot that it can be said to be almost an inevitable incidence of it. This perhaps may explain why riot and its associated manifestation “civil commotion” came to be excluded as insurable risks in most policies of insurance – see MacGillvray op. cit at paragraph 26-32. This, I dare say, might have provided the raison d’etre for the English Riot (Damages) Act 1886 which was the undoubted progenitor of Belize’s Riots Compensation Act which came into effect on 3<sup>rd</sup> July 1895, only some nine years after its English ancestor. This enables a person including an assured, who has suffered damage from riot, to claim compensation. The scheme of the Act is such that where an assured has been indemnified by his insurance company, the company itself can claim. That is, it is in effect, subrogated for the assured whom it has paid for the riot damage. This I surmise is at the heart of this case.
  
25. From the evidence in this case clearly audible from the television footage of the events, were the chants of the crowd as they massed from Belcan Bridge in the twilight of that fateful 20<sup>th</sup> April 2005, “*To Albert Street, to Albert Street*” and “*To Hofins, to Hofins*”, they were heard to shout in the video. It cannot therefore in my view, be seriously doubted that those in the crowd so shouting had a common purpose with a fixed intention, namely, to descend upon the stores and shops in Albert Street and its environs, not, it must be said, for the purpose of window-shopping or a

shopping trip, for that matter, but rather for the purpose of looting the stores in the area. It also cannot be doubted that they would use and indeed used violence, to effect their purpose. The violent break-ins to get into the stores was clear evidence of this. Indeed, from the evidence also, the police had to use some force to effect the arrest of some of the looters, who could not be said not to have resisted the lawful authority of the police to apprehend them.

26. I am therefore satisfied that from the evidence, there was a riotous assembly of persons within the contemplation of the Act to entitle the claimants to succeed.
  
27. I am also satisfied that even from the evidence of the police officers themselves, the losses for which the claimants are claiming compensation within the Act, flowed from what was clearly a riot. The police officers however deny this as they aver that no one was charged with the offence of riotous assembly nor was the Riot Act (the Proclamation to disperse a crowd as provided for in sections 231, 246 and 247 of the Criminal Code), for that matter read. However, the scenes described by Assistant Commissioner of Police Jeffries, at paragraphs 4, 5, 6, 7 and 8 of his witness statement, and by Superintendent Williams at paragraphs 4, 5, 6, 7 and 8 of his and by former Inspector Anthony Rosado at paragraphs 8, 9, 10 and 11, all attest to a state of riot in my view, which was graphically captured in the video footage shown to the Court. The scene of the pillaged stores and the deployment and manoeuvres of the POU as described by Rosado in paragraph 11 of his witness statement could, with respect, in the words of Lord Sumner in **Bolands supra** be described “*as one of tumult and certainly a scene of disturbance of public peace which to a layman as well as to a lawyer might well, on consideration of these aspects of it, be called a riot*”, at pp. 847 – 848.

28. It does not, I think make any difference that no one was charged with the offence of riotous assembly or that the "Riot Act" was not read. That none of this was done, does not, in my view, detract from the position that there was a riot. This, I venture to say, is a matter for the determination of the court in the light of the evidence and the law.
29. I am persuaded that the scenes depicted in the videotapes of the massed persons on Belcan Bridge and the chanting of some in the crowd "*To Albert Street, to Albert Street*" and the pictures of the looted stores in Albert Street, and attempts by the police to apprehend some of the looters were nothing short of riot. Also, from the TV footage I am not persuaded that the outage of electricity in the area facilitated the looting of the stores. This had been underway for sometime before the lights went out in the area and just before the deployment of the POU.

### Conclusion

30. In the light of the foregoing, I can only determine and conclude the issue in this case in the affirmative. That is to say, there was a riotous assembly of persons within the meaning of the Riots Compensation Act which resulted in riot. The reading of the "Riot Act" does not in my view, wholly constitutive of riot, but it is one factor in the consideration. Therefore the fact that the Riot Act was not read on 20<sup>th</sup> April 2005, did not mean in law, that the ensuing situation culminating in the pillaging of the stores in Albert Street, was not a riot. In my view, from the evidence, I think the situation on 20<sup>th</sup> April 2005 comes within the definition of riot in section 245 of the Criminal Code, at the very least, within paragraphs (b) or (c) of this section, if not both. There can be no doubt that the crowd on Belcan Bridge demonstrated a common purpose of obstructing the police or resisting them in the execution of their lawful authority or process of clearing obstruction from the bridge. I am equally in no doubt that the

object of part of the crowd, numbering according to the evidence, 75 to 80 persons running amok in Albert Street, was to facilitate if not by force or show of force at least by numbers, the commission of the crime of burglarizing and looting the stores in Albert Street. This sadly, they succeeded in doing. I therefore find that they were engaged in a riot.

31. Accordingly, I declare that persons riotously assembled on 20<sup>th</sup> April 2005 within the meaning of the Riots Compensation Act, damaged, stole and destroyed properties of insured persons listed in the Schedule of the Claim Form in this case.
32. I further declare that compensation under the Riot Compensation Act in respect of the sums paid to the said insured persons by the claimants is due and payable to the claimants.
33. I award the costs of these proceedings to the claimants to be agreed or taxed.

**A. O. CONTEH**  
**Chief Justice**

**DATED: 12<sup>th</sup> June 2007.**