Business interruption claims in the context of COVID-19: first Appeal decision in Canada

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On November 26, 2021, the Québec Court of Appeal granted two motions to dismiss an appeal, confirming the trial decision rendered on August 18, 2021, which denied an application for authorization to institute a class action to obtain insurance coverage for business interruption losses incurred by dentists' offices due to COVID-19.

The Court of Appeal also validated the trial judge's conclusion that since losses stemming from COVID-19 are not resulting from a direct damage to property, they are therefore not covered by standard business interruption insurance in Québec.

This article deals only with the dismissal of appeals as of right in *Centre de santé dentaire Gendron Delisle Inc. et 9306-6876 Québec inc.*,[1] and does not discuss the specific case in *L'Unique* involving specific insurance clauses.[2]

The trial judgments[3]

The dentists' claims were asserted on the basis that, due to COVID-19, they were entitled to insurance indemnities under the business interruption policy.

The Superior Court concluded that:

> [TRANSLATION] "the business interruption extension only pays if there is a covered loss, i.e. an event causing direct damage to property. In other words, the business interruption must be the result of direct damage to insured property."

Authorization

Since the plaintiff alleged no such damage to property, authorization to institute a class action was denied. The plaintiff appealed these judgments as of right.

Dismissal of the appeal

The insurers filed an application to dismiss the appeal, arguing that the trial judgment contained no errors and that the appeal had no chance of success.

The Court of Appeal confirmed that the trial judge could rule on the legal question, which concerned standard insurance policies. Once this was validated, the Court also accepted the trial judge's conclusion that under this type of insurance policy, business interruption coverage is conditional on physical damage.

Since the plaintiffs had alleged no such damage, the Court of Appeal validated dismissal of the appeal.

This is naturally a major decision for the insurance industry.

[1] *Centre de santé dentaire Gendron Delisle Inc. c. La Personelle, assurances générales inc. et als.*, 2021 QCCA 1758, and *9306-6876 Québec inc. c. Intact compagnie d'assurance*, 2021 QCCA 1759.

[2] *L'Unique assurances générales inc. c. Centre dentaire Boulevard Galeries d'Anjou inc.*, 2021 QCCA 1757.

[3] *Centre de santé dentaire Gendron Delisle inc. c. La Personnelle, assurances générales inc*., 2021 QCCS 3463; and *9306-6876 Québec inc. c. Intact compagnie d'assurance*, 2021 QCCS 3462.

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