

Business interruption insurance in Canada: Québec dentists denied claims

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In a [recent decision](#), the Superior Court of Québec concluded that it could not authorize a class action by which certain Québec dentists were claiming insurance indemnities as a result of business interruption allegedly sustained due to COVID-19. More precisely, the Court rules that the Motion for the Authorization of a Class Action did not contain sufficient allegations to support a defendable cause of action, vague allegations pertaining to Covid-19 being insufficient to serve as a trigger for coverage under policies which require direct physical damages in order to claim business interruption losses.¹

Background

The dentists' claims were asserted on the basis that COVID-19 was a covered peril under the all-risks insurance policies underwritten by the insurers, as viruses or pandemic outbreaks were not specifically excluded perils. They further argued that the business interruption insurance was standalone coverage, which did not require direct physical damage to the insured property.

The main issue was therefore whether the allegations, as advanced by the plaintiff, could possibly trigger coverage under the policy wordings issued in Québec.

Case decision

Justice Davis of the Québec Superior Court found that "the business interruption extension only pays the insured if there is a covered loss i.e. an event causing direct damages to property. To say it otherwise, the business interruption must be the result of a direct damage to the insured property."²

The court therefore confirmed that direct damage of a physical nature was a condition precedent to any coverage, including business interruption coverage, under the meaning of the policy filed on the application.

Reviewing the allegations raised by the plaintiffs, the court found no allegations of any nature that would allow for any factual basis supporting a claim.

The court ultimately concluded: “It follows that the plaintiff’s claim is not for business interruption caused by loss or damage to its insured property. It is simply a request to be compensated for the business interruption caused by the limitation of its activities caused by the operation of the government’s order in council. [...] It is clear that the insurance policy the plaintiff purchased does not provide such coverage. The plaintiff fails in its attempt to show an arguable case.”³

The authorization of this proposed class action was therefore denied.

Conclusion

While this judgment was rendered in Québec, under civil law principles, and is not binding on courts in the common law jurisdictions of Canada, it will be interesting to see if it will impact how other courts in Canada approach their analysis of these claims.

If you have any questions regarding this decision, or how COVID-19 insurance coverage may impact your business, contact our Insurance Claim Defence group or any of the contacts listed below.

¹ Centre de Santé Dentaire Gendron Delisle Inc. v. La Personnelle and als., 2021 QCCS 3463 (CanLII)

² Translation of par. 52 of the La Personnelle’s judgment.

³ Translation of par. 75-76 of the La Personnelle’s judgment.

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