Business interruption loss claims and COVID-19: What is the situation in Québec in 2024?

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Following the onset of COVID-19 and the ensuing emergency measures, many class actions were submitted to the courts regarding business interruption losses resulting from government prohibitions associated with the pandemic. In the wake of the Gendron decision, the first decision in Canada to address this issue, Québec courts have confirmed that commercial policies generally issued by casualty insurers ("standard" policies) afford no protection against losses sustained by businesses on account of a closure due to COVID-19.

Background and context

In 2020, several putative class actions were filed in Québec in the weeks following the issuance of government orders requiring businesses to close for public health reasons. These actions were for business losses suffered and then claimed for from various groups of insurers.

On August 18, 2021, the Superior Court rendered a landmark judgment in the Gendron Deslisle case, which involved dental offices. The Court confirmed that:

a. "standard" insurance policies require material damage to property to trigger business interruption coverage;
b. government orders associated with COVID-19 cannot give rise to such damage.[1]

On November 26, 2021, the Québec Court of Appeal confirmed the Superior Court's judgments.[2]

However, despite the prior judgments and this Court of Appeal decision, certain putative class actions were continued (or are being continued) by their representative plaintiffs.

The Superior Court subsequently had to consider the effect of the Gendron Deslisle decision. In its decision in Elixor,[3] the Superior Court approved the application for a discontinuance in the following terms:

> [Translation]

> CONSIDERING that the Superior Court and the Québec Court of Appeal have decided, on the one hand, that the policy endorsement covering loss of profits does not afford separate coverage but is dependent on stipulations of the policy covering only property damage, and, on the other hand, that this property insurance **requires that the occurrence directly affects and damages the insured property**, on the premises of the insured, as the result of a covered risk;
>
> CONSIDERING also that **the only covered risks are material loss or damage caused directly to insured property**, the interruption arising from governmental decrees related to COVID-19 does not give rise to an insurance indemnity.

Despite the foregoing, some casualty insurers are still involved in litigation involving the same issues.

Comment

The judgment in Elixor, which authorizes the discontinuance of a putative class action involving the same type of policy and based on the same allegations, confirms the authority of the Gendron decision on **the fact that there needs to be material damage** to property in order to assert a right under a "standard" insurance policy.

As a result of the various judgments rendered in recent years to address issues arising indirectly from COVID-19, the courts have accepted that business-loss forms included in "standard" insurance policies apply only when there is material and tangible damage to insured property.

[1] *Centre de santé dentaire Gendron Delisle inc.* c. *La Personnelle, assurances générales inc.*, 2021 QCCS 3463.

[2] *Centre de santé dentaire Gendron Delisle inc.* c. *La Personnelle, assurances générales inc.*, 2021 QCCA 1758.

[3] *9092-1651 Québec inc. v. Promutuel Reinsurance (Promutuel Assurance),* 2023 QCCS 1537.

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