

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

December 07, 2021

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 Personelle, assurances générales inc.*, 2021 QCCS 3463; and *9306-6876 Québec inc. c. Intact compagnie d'assurance*, 2021 QCCS 3462.

By

[Stéphane Pitre](#), [Marc-André McCann](#)

Expertise

[Class Actions](#), [Insurance Claim Defence](#), [Disputes](#), [Appellate Advocacy](#)

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 725 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2024 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.