ONCA Clarifies That Business Interruption Losses Are Not An Insured Loss



Further, to my previous blog on *Workman Optometry Professional Corporation v. Certas Home and Auto Insurance,* 2023 ONSC 3356, an appeal of the action was heard on June 12, 2024.

In the Court of Appeal's short decision they upheld the Superior Court decision.

Superior Court Decision

The Superior Court decision involved a class action by the plaintiffs of various companies. They sought business interruption coverage for lost revenues due to the COVID-19 related restrictions. The defendants were made up of a number of insurers who denied the plaintiffs' business interruption claims.

In the Superior Court the court addressed the following three questions when rendering its decision:

1. Can the presence of the SARS CoV-2 virus or its variants cause physical loss or damage to property within the meaning of the business interruption provision of the business interruption provisions of each defendant's property insurance wordings?
2. Can an order of a civil authority in respect of business activities that was made due to the SARS CoV-2 virus or its variants cause physical loss or damage to property within the meaning of the business interruption provisions of each defendant's property insurance wordings? and;
3. If the answer to either of the first questions is "yes", are there any exclusions in any of the defendants' property insurance wordings that would result in coverage for such loss or damage being excluded?

with "physical loss or damage to property" including "direct physical loss" or "direct physical damage", or similar wording as may be used in the business interruption provisions of each defendant's property insurance wordings.

The first two questions were answered no which meant it was unnecessary to address the third question.

Appeal Decision

On appeal, the appellants argued that the trial judged erred as follows:

- He incorrectly held that the real or apprehended physical presence of SARS-CoV-2 on commercial property was not “physical damage” to the extent that it rendered the property dangerous; and
- He incorrectly held that a “loss of use” resulting from the presence of SARS-CoV2 did not amount to “physical loss” within the meaning of the various insurance policies.

The Court of Appeal held that the decisions of the Superior Court Judge was “thorough and impeached and his conclusion is correct.”

Key Takeaways

There is now becoming a large number of cases supporting that a denial of business interruption claims due to COVID-19 are appropriate.

There must be an alteration or damage to the property for a virus to be considered the cause of physical or damage to the property. As such, business interruption policies will not regularly cover loss of profit related to COVID-19 unless there is physical damage or alteration to a property.

See: *Workman Optometry Professional Corporation v. Certas Home and Auto Insurance Company*, 2024 ONCA 479

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

Author: Rory Love

Strigberger Brown Armstrong