

COVID-19 and Business Interruption Claims: No Coverage Absent Direct Physical Damage

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In two companion actions,[\[i\]](#) the Quebec Court of Appeal recently validated the Honourable Justice Davis' findings that business interruption losses arising from the COVID-19 pandemic are not covered losses in the absence of physical property damage. These two decisions are the first ones to be released in Canada on that issue at the appellate level.

Three class actions were brought in Quebec by dental clinics against their property insurers for loss of revenues suffered as a result of government-mandated closures. The Honourable Justice Davis certified a class action against L'Unique,[\[ii\]](#) but dismissed the motions for certification against Intact[\[iii\]](#) and against Promutuel and others. [\[iv\]](#)

The Intact policy wording included the following clauses:

Indemnity Agreement

This Form insures against loss directly resulting from necessary interruption of the Insured's business caused by direct physical loss or direct physical damage by the perils insured against, to building(s), equipment or stock on the premises, occurring during the term of the policy.[\[v\]](#)

Nature and Scope of Insurance

In the event that any of the insured property is lost or damaged during the policy period by an insured peril, the Insurer will indemnify the Insured against the direct loss or damage so caused (...).

This Form, except as otherwise provided, insures against all risks of direct physical loss of or damage to the insured property.[\[vi\]](#)

The Honourable Justice Davis held that the policy provided coverage to property which was located in the insured premises. He further held that absent any direct physical damage to such insured property, coverage was not triggered. There were no significant differences between Intact's policy wording and Promutuel's policy wording. As a result, the motions for certification of class actions against Intact and Promutuel were both dismissed.[\[vii\]](#) The class action against L'Unique was authorized to proceed because of ambiguities in the policy wording.[\[viii\]](#)

All three decisions were appealed. In both the Intact and Promutuel cases, the Court of Appeal granted motions to dismiss the appeals. The Court of Appeal held that Honourable Justice Davis correctly laid out why there was no coverage under the applicable policy wordings, which contained standard and unambiguous clauses.[\[ix\]](#) As for the L'Unique case, the Court of Appeal noted that leave to appeal certification decisions is granted only in exceptional cases and held that the test for leave was not met.[\[x\]](#)

It will be interesting to see if the Quebec Court of Appeal decisions in the Intact and Promutuel cases are applied in other Canadian cases, including in the national class action certified in *Nordik Windows v. Aviva*.^[xi] In that case, Nordik Windows Inc. and Nordik Cash and Carry Inc., an Ottawa-based custom residential window manufacturing, retailing and installation business; Real Food for Real Kids Inc., a catering company that supplies meals to children in daycares and summer camps across the Greater Toronto Area; and Hangar9 Studios Inc., a clothing retailer also in the Greater Toronto Area, are the representative plaintiffs claiming business interruption losses due to the COVID-19 pandemic.

[i] *Centre de santé dentaire Gendron Delisle inc. c. La Personnelle, assurances générales inc.*, [2021 QCCA 1758](#); *9306-6876 Québec inc. c. Intact compagnie d'assurance*, [2021 QCCA 1759](#).

[ii] *Centre dentaire Boulevard Galeries d'Anjou inc. c. L'Unique assurances générales inc.*, [2021 QCCS 3461](#).

[iii] *9306-6876 Québec inc. c. Intact compagnie d'assurance*, [2021 QCCS 3462](#).

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

[v] *9306-6876 Québec inc. c. Intact compagnie d'assurance*, [2021 QCCS 3462](#) at para 5.

[vi] *9306-6876 Québec inc. c. Intact compagnie d'assurance*, [2021 QCCS 3462](#) at para 7.

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

[viii] *Centre dentaire Boulevard Galeries d'Anjou inc. c. L'Unique assurances générales inc.*, [2021 QCCS 3461](#) at para 44.

[ix] *Centre de santé dentaire Gendron Delisle inc. c. La Personnelle, assurances générales inc.*, [2021 QCCA 1758](#) at para. 7; *9306-6876 Québec inc. c. Intact compagnie d'assurance*, [2021 QCCA 1759](#) at paras. 3-4.

[x] *L'Unique assurances générales inc. c. Centre dentaire Boulevard Galeries d'Anjou inc.*, [2021 QCCA 1757](#) at paras 2-3.

[xi] *Nordik Windows v. Aviva*, [2021 ONSC 4477](#); *Nordik Windows v. Aviva*, [2021 ONSC 5807](#).

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

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