
BUSINESS INTERRUPTION INSURANCE

CORONAVIRUS PANDEMIC AND THE RISE OF BUSINESS INTERRUPTION INSURANCE CLAIMS



Coronavirus pandemic has caused significant human harms as well as financial loss to individuals and businesses around the globe. Some Canadians have had anticipated the happening of an interruption to their operations and obtained a “Business Interruption Insurance” coverage from their insurers. The question a lot of business owners are now facing is whether or not the interruptions occurring currently due to the pandemic can give rise to insurance claims for the purpose of such policies?

What is Business Interruption Insurance?

Like any other type of insurance policies, it is important to understand the terms and conditions as well as limitations provided in the policy to have a full grasp of its coverage. Business Interruption Insurance is categorized as a form of property insurance and covers the risk of lost income and incurred costs during a period of interruption in the business due to “direct physical damage” to the properties of the insured. Furthermore, the policies usually provide that such physical damage should be resulted from a foreseen peril in the insurance policy.

In other words, in order to seek coverage under this type of insurance, the insured should demonstrate that operation of business is impossible because of a damage to the property of the insured resulted from a peril recognized by the policy.

Does Business Interruption Insurance Cover Business Interruption Due to the Pandemic?

Property insurance policies that provide business interruption coverage may either refer to certain perils or all perils as the admissible cause of the damage to the property. Attention should be paid to the list of perils in the policy as well as list of exclusions in the “all perils” type of policies. The more challenging part in establishing such claims from the insured’ point of view might be the “direct damage to the property” component. When the insured property’s structure is unaltered, and the insured claims the property’s usefulness, or functionality has been lost or diminished, questions arise as to whether coverage is triggered.

What is the Ontario Courts' Treatment of Business Interruption Insurance Claims?

The Ontario courts have had a liberal approach to the interpretation of “damages” in property insurance policies. A very recent decision of the Ontario Superior Court of Justice issued on March 30,2020 seems to have answered the question regarding Business Interruption Insurances. In *MDS Inc. v Factory Mutual Insurance Company*[1], MDS claimed coverage for an unanticipated leak of heavy water from its reactor that resulted in 15 months closure of the premises in order to investigate the leak.

MDS claimed for coverage even though no physical damages were done to the property and the use of property was made impossible merely because of investigation of the water leak. The question before the court was whether or not the intangible damage to the property falls within the required “direct physical damage” under the insurance policy.

[1] *MDS Inc. v. Factory Mutual Insurance Company*, 2020 ONSC 1924 (CanLII), <<http://canlii.ca/t/j6dk0>>.

The court's position was affirmative. Justice Wilson J. of the Ontario Superior Court of Justice held that:

"I conclude that a broad definition of resulting physical damage is appropriate in the factual context of this case to interpret the words in the Policy to include impairment of function or use of tangible property caused by the unexpected leak of heavy water. This interpretation is in accordance with the purpose of all-risks property insurance, which is to provide broad coverage. To interpret physical damage as suggested by the Insurer would deprive the Insured of a significant aspect of the coverage for which they contracted, leading to an unfair result contrary to the commercial purpose of broad all-risks coverage."

Conclusion:

Business Interruption Insurance's coverage is subject to proof of direct physical loss to property which has led to the stoppage of the business operation. The Ontario courts liberal approach in interpreting "physical damage," and accepting non-tangible damages as qualifying for the direct loss requirement is of relevance to the businesses suffered from the pandemic. The recent decision of Ontario Superior Court of Justice, although not particularly dealt with the outbreak of an infectious disease, may imply admissibility of Business Interruption Claims due to the COVID-19 pandemic, where businesses are forced to shut down by government orders. Further, the insured may have a provable claim where their business is temporarily closed because one of the staff was infected with the virus, and they had to evacuate the premises for a period. Additionally, if the claim is successfully made, expenses incurred for sanitization and disinfecting the properties in such cases may be claimed under the Business Interruption Insurance in addition the loss of income.

