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Canadian court rules on whether COVID-19 amounts to physical damage

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One of the most hotly-debated insurance issues arising from the COVID-19 pandemic has been whether COVID-19 amounts to '*direct physical loss or damage*'.

The Canadian courts have made their first substantive decision on the subject, in *Sir Corp.* v *Aviva Insurance Company of Canada* 2022 ONSC 6929, SIR Corp, in which it was determined that COVID-19 did not constitute '*direct physical loss or damage*'

Facts of the case

The insured held an all-risks material damage policy, which covered '*all risks of direct physical loss or damage*' (unless excluded).

The policy included the following business interruption extension:

'*This Policy insures loss, as covered herein, which is sustained by the Insured as a result of damage caused by order of civil or military authority to retard or prevent a conflagration or other catastrophe*.'

In March 2020 SIR Corp was forced to close its businesses due to the COVID-19 mandate. Insurers denied coverage under the Extension because COVID-19 did not constitute '*direct physical loss or damage*' to property. Sir Corp, on the other hand, argued that COVID-19 triggered coverage as the extension did not require a '*physical*' loss.

Decision

The Canadian court held that the loss was not covered, as the insured had agreed to an all-risks policy whereby the Extension was complimentary to the foundational insurance agreement.

The Extension was to be read in conjunction with the entire policy and did not operate in isolation. Cover therefore depended on whether the insured has suffered physical damage to its property. The Court's explained its decision by referring to the key words, '*as covered herein*', essentially requiring a physical damage to trigger the interruption cover. The Court held – in a manner consistent with many courts in other jurisdictions, that COVID-19 did not amount to physical damage.

As such, the Extension was not triggered.

Conclusions

This decision reinforces a long-held principle of contract interpretation, namely that contracts must be read as a whole. For the first time, this case also confirms that – in Canada at least – COVID-19 does not amount to physical damage, which will be significant for material damage and business interruption insurers in that jurisdiction.

However, we do understand the decision will be appealed. We will provide a further update in a future edition of The Word.

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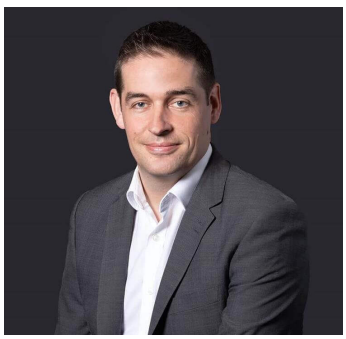
Key contact



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