



Timing Is Everything: Ontario Summer Camps and Business Interruption Insurance

By Sonya Katrycz

Ontario's accredited overnight summer camps may face unique challenges in claiming business interruption coverage for COVID-19 related losses. Although many of the camps' all risks policies contain an exclusion for business interruption loss triggered by viruses, the same policies may also have an extension for infectious disease coverage. The infectious disease extension is unique in the post-SARS insurance landscape, and seems to offer some possibility of coverage for business losses sustained by summer camps because of the current pandemic. A potential difficulty, however, is that a number of the relevant camp policies expired on May 1st, 2020, and the infectious disease extension was not available to the summer camps on renewal.

Was coverage available before May 1st?

The relevant infectious disease extension can only be engaged by business interruption/interference from a civil authority. The endorsement will typically have a lower policy limit than the limit for the Business Interruption coverage in the main body of the policy. The extension endorsement requires the following: 1. A loss caused by a Civil Authority order; 2. Cancellation or inability to accept bookings; 3. The loss must occur within a certain radius of the insured premise, specified in the policy; and 4. The damage must be caused by an infectious disease.

The *Emergency Management and Civil Protection Act* and Regulation 82/20 of March 17, 2020 ordered the shut-down of all non-essential Ontario businesses, and likely constitutes the business interruption or interference by a civil authority needed to engage the infectious disease extension for summer camps. That said, the order alone does not result in automatic entitlement to policy limits. Insured camps are only entitled to claim coverage for revenue lost as defined under the policy during and as a result of the civic order. Camps may have documented some level of diminished enrollment to date. But, the much greater losses associated with program cancellation, if any, have arguably yet to crystalize, depending on the camp's specific situation.

Is coverage available after May 1st?

In some circumstances, losses sustained by Ontario summer camps as a result of COVID-19 after May 1st, 2020 could still be covered by the pre-May 1st infectious disease extension. The wording of some policies suggests that coverage under the infectious disease extension remains available for the duration of any civic order commenced within the policy period, irrespective of the expiration of that policy. Accordingly, business interruption insurance further to the infectious disease extension may remain available to summer camps as long as the order of March 17, 2020 is in force.

Inevitably, the order will be lifted, and camps will need to know whether COVID-19 related revenue losses sustained thereafter are insured. While many business interruption policies end coverage as soon as the relevant civil order is lifted, the camps' policies, insofar as we have seen, appear to grant coverage over a 12 month indemnity period following the issuance of the order, "during which the interference or interruption shall have affected the results of the business in consequence of the



damage”. In the event that a second order is issued after the first is lifted, camps must argue that the second order is an exacerbation of the first, and not a new triggering event.

Practical Considerations for Ontario Summer Camps

Ontario summer camps find themselves caught between the imperative to proceed with summer plans until and unless it becomes impossible to do so, and the practical necessity of demonstrating revenue loss within the indemnity period and in consequence of the order of March 17, 2020. Camps must also keep in mind the duty to mitigate damages continues to apply.

Ultimately, whether and to what extent business interruption coverage is available to Ontario summer camps will hinge on the wording of the camp’s particular insurance policy, on its specific circumstances, and on the duration of the civic order of March 17, 2020. Coverage cannot be determined based on this article, or based on any other kind of generic commentary. The author can be contacted directly with inquiries.

ZTGH’s Coverage Practice Group will continue to closely monitor the legal and business implications associated with the COVID-19 pandemic and report on further developments.

About the Author:

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Since her call to the bar of Ontario in 2013, Sonya has cultivated a deep breadth of litigation experience, and has defended insurers in hundreds of actions pertaining to bodily injury, accident benefits, professional liability, and product liability. Sonya is just as interested in helping her clients prevent litigation as she is in defending the claims that eventually arise. She is passionate about coverage work, particularly with respect to commercial general liability policies.

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