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OUR INSURANCE PRACTICE

We cover all facets of insurance litigation. Our lawyers draw on extensive trial and appellate experience to advise clients on the spectrum of policy, coverage and defence matters. With over three decades of experience, Lenczner Slaght has a proven record in litigating coverage cases among and against insurers involving issues including trigger of coverage, allocation of defence and indemnity, covered/excluded claims, obligations among primary and excess insurers, reinsurance, drop-down matters and run-off coverage.

Insurance

“Insurance coverage is contractual. It is important to obtain or provide as much clarity as possible regarding the extent of coverage available.”

What was the most interesting development of 2023, and why?

Ontario courts released anticipated rulings on coverage claims for the extensive business interruption losses suffered as a result of the COVID-19 pandemic. These decisions affirmed that where such coverage requires “direct physical loss or damage,” actual tangible damage must be suffered. Broader coverage, including for loss of use of property that may not otherwise be damaged (as in [MDS Inc v Factory Mutual](#)), requires additional and more expansive policy language.

The Superior Court issued its decision in the class action [Workman Optometry Professional Corporation v Certas Home and Auto Insurance Company](#), addressing whether there was coverage for business losses suffered by many businesses from COVID-19 closures under commercial property insurance policies. These policies insured against “all risks” of

direct physical loss of, or damage to, property of the insured. The Superior Court held that the presence of the virus did not constitute direct physical loss or damage to property, as there was no tangible or concrete harm suffered to the property. Further, the policies did not provide “loss of use” coverage.

In [SIR Corp v Aviva Insurance Company of Canada](#), our Court of Appeal addressed whether a loss of food inventories by insured restaurants arising from government-ordered COVID-19 lockdowns were covered losses as the damage arose from an order by a civil authority. It held that neither the virus nor the civil orders resulted in “direct physical loss or damage” to insured property. In the absence of direct physical loss or damage, the policies were not triggered.

What’s the primary takeaway for businesses from the past year?

Insurance coverage is essential to manage liabilities, unexpected perils, and risks in business. But insurance coverage is contractual, and our courts will apply the policy’s clear language in the absence of ambiguities. It is important to obtain or provide as much clarity as possible regarding the extent of coverage available.

What’s one trend you are expecting in 2024?

Corporate spending on class action lawsuits continues to increase steadily. These lawsuits are expensive to defend and present potentially significant liabilities. They may claim losses that span multiple policy periods and may involve different insurers. Ensuring adequate insurance coverage and notifying all potential insurers and policies in the face of any claim is essential. Litigation among insurers may ensue to address which policies are triggered,

the extent of obligations that might be owed in the face of other insurance, and how to allocate such liabilities among insurers. We are awaiting a decision in [Loblaw v Royal & Sun Alliance](#), which will address some of these issues in the context of multiple class action claims against opioid manufacturers and distributors for the opioid epidemic and its costs.