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BRIEFING NOTE

B.C. Supreme Court confirms that an "occurrence based" policy will ordinarily be triggered by the event of loss, rather than the allegedly negligent act that caused it.

Generally speaking, occurrence based policies provide coverage for occurrences that happen within the policy period regardless of when a claim arising out of that occurrence is actually made. This is different to a "claims made" policy, where cover is provided for *claims* made within the policy period, regardless of when the underlying alleged negligence or loss, occurred.

In ***R.C. Heating & Gasfitting Ltd. and Chad Robert Young v. Sovereign General Insurance Company*** (2017 BCSC 1916), the insured petitioners were alleged to have been negligent in the installation of a gas system in a cabin, causing or contributing to an explosion in 2014 that injured 4 tourists. When RC Heating installed the system in 2005, it had coverage under a CGL policy provided through the defendant, and which coverage was renewed until RC Heating ceased operations around 2007. In 2016 it was added as a third party to an action by the tourists.

The policy provided cover for *inter alia* bodily injury or property damage caused by an occurrence that took place within the policy territory & policy period. Occurrence was defined as "*…an accident, including continuous or repeated exposure to substantially the same general harmful conditions*." Accident was in turn defined as "*an unintended or unforeseen event which causes an injury or damage*".

The petitioners raised a number of arguments in this petition which sought a declaration of a duty to defend it in the underlying action. The central argument was that the allegedly negligent gas fitting was the "occurrence" falling within coverage, such that there was a duty to defend it in the underlying proceedings.

In addressing this issue, Saunders J., relied on *Pickford & Black Ltd. v. Canadian General Insurance Co.*, [1977] 1 S.C.R. 261 which he found to be on point. There the Supreme Court of Canada found (upholding the lower appeal court) that an accident refers to a discrete event of loss, not to the cause of the loss. In that case, cargo had shifted at sea causing damage to it, and the reason it shifted was the negligent stowage by the plaintiff stevedores. He quoted from that judgment (in part) as follows

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> *… I am, with the greatest respect, unable to conclude that the accident at sea was so bound up with the negligence at the dockside as to transform the latter from being an originating cause into being the event of which it was causative. Such a construction appears to me to rob the word "accident" as used in the policy of its natural and ordinary meaning by interpreting it as connoting not the "accident" but the cause of the accident.*

Applying this to the facts at bar, Saunders J held;

> "*The focus must be on the immediate circumstances of a loss, not its originating cause. The insurmountable problem for the petitioners in the present case is that under the Policy, "accident" and "occurrence" are not separate concepts; the Policy states, "Occurrence means an accident…*"
>
> *…in the present case the natural and ordinary meaning of "accident" is reinforced by the Policy's definition of that term, which explicitly limits the unintended or unforeseen events insured against to those which cause an injury or damage. If the interpretation contended for by the petitioners were what was intended, the phrase "which causes an injury or damage" in the definition of "accident" would be redundant* " (our emphasis)

This is, quite clearly the logical and reasonable application of the language of the policy to the facts of the loss. Accordingly, as the occurrence fell outside of the policy period, there was no duty to defend.

The facts do highlight the practical distinction for small business owners when winding up their business, particularly tradespersons whose negligence may lay dormant for years before causing a loss. Just what run-off cover may be available is beyond the scope of this note, however where cover is cancelled on winding up a business, where a tradesperson operates through a company, arguably the effect of the absence of cover will be borne by those trying to sue. On the other hand if the tradesperson does not have the benefit of a corporate veil, their personal assets are at risk. In this case, it is not entirely clear from the style of cause, which applied.

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