

Drafting policy limits – precision is key

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In [Ontario v Northbridge General Insurance Corporation](#), Canadian courts held that the limit of liability provision was ambiguous and subsequently was interpreted in favour of the insured. Insurers appealed this decision, asserting the judge has erred in the interpretation of the policy.

Facts of case

The insured held a property and business losses policy with the insurer, Northbridge. The policy was amended to include cover for business losses arising from the pandemic.

This included a limit of liability provision stating,

‘The most we will pay under this Extension of Coverage in any one policy period is \$25,000 or as otherwise indicated on the schedule...’

The insured’s businesses suffered closures due to the COVID-19 pandemic. The insured sought an indemnity under the policy for losses of \$50,000 for each premises. The parties were both in agreement that the \$25,000 limit was an error, and that the correct limit should have been \$50,000. However, there was a disagreement as to whether it applied to each premises or in the aggregate. This question determined whether the insured’s claim was worth \$50,000 or \$350,000.

Judgment

The insured argued that as the policy schedule referred to the ‘Scheduled Risk Location’ in the singular and that the definition of ‘Scheduled Risk Location’ referred to the ‘risk location(s) specified in the schedule’ (i.e. plural reference to locations), coverage must apply on a per location basis.

Insurers argued that this was countered by the general provision in the policy which stated that the singular includes the plural. Insurers further argued that to conclude cover was on a per location basis would require the court to read the word ‘each’ into the policy, which was not present.

The court found in favour of the insured, stating that the provision was clear, particularly when read in conjunction with the policy as a whole. The court held that the definition of ‘Scheduled Risk Location’ simply served to direct the reader to the location (or locations) on the schedule, but that it did not also serve to aggregate multiple locations into a singular risk location for the purposes of applying the limit. The court also referred to the fact the policy contains separate schedules for each location and that this was consistent with an overall ‘per location’ approach to coverage.

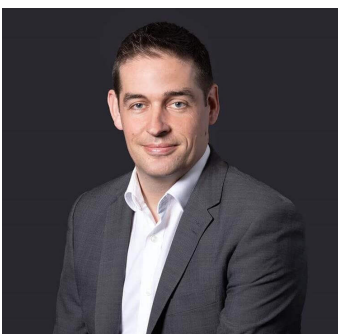
Considerations for underwriters

This decision is another reminder of the importance of precision when drafting policy wordings, particularly when looking at limits. Whenever drafting any financial limits, it is important to be absolutely clear as to whether it applies as on per incident / claim / property basis, or in the aggregate. In this case the amounts at stake were not particularly high. But they easily could have been...

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