
Multiple Grow Ops – Only One Deductible?

Citation: 2009 BCSC 613

At Issue: Whether the definition of “occurrence” aggregates the losses caused by multiple marijuana grow operations such that only one deductible would apply.

The Court: British Columbia Supreme Court

Judgment Rendered:

May 5, 2009

Factual Summary:

In 2005, the owners of a residential condominium complex discovered that one-third of the units in the complex were being used to house marijuana grow operations. Nine of the 29 units in which grow operations were discovered were reported by a tipster. The owners were insured under an All-Risks Property Damage and Business Interruption Insurance Policy that provided for a \$50,000 deductible for each “occurrence” of illegal drug activity related losses. The owners argued that the total losses (near \$500,000) constituted one occurrence. The insurers took the position that the losses from each separate grow operation constituted a separate occurrence, in which case the deductibles would exceed the losses. A retired RCMP officer testified that it was his opinion that the grow operations were co-ordinated.

Decision:

Where the question was whether losses that occurred in different places at different times should be aggregated or not, the burden fell upon the party seeking to establish the aggregation. The plaintiff owners bore the burden of proving that there was only one “occurrence” of illegal drug activity and they failed to discharge this burden.

The illegal drug activity was irrelevant to the question of cause as an aggregating factor absent further commonality. The evidence did not establish that the grow operations were coordinated by a single organization, although if it had, the plaintiffs would have established that their losses were indirectly attributable to one cause or occurrence.

The nine grow operations were found to be sufficiently related by the informant’s report so that the losses arising from those units constituted a single occurrence and attracted the application of one deductible. The losses included the repair costs and the rental losses due to the unavailability of those units while they were being repaired.

The losses arising from each of the remaining 20 units constituted 20 separate occurrences, each subject to a deductible of \$50,000.

The additional rental loss resulting from the damaged reputation of the condo complex constituted a separate occurrence subject to one further deductible of \$50,000.