

CITATION: Carr Law P.C. et al. v. Certas Home and Auto Ins. Co., 2026 ONSC 2203
COURT FILE NO.: CV-20-00651654-0000
DATE: 20260604

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
CARR LAW PROFESSIONAL	)	
CORPORATION and 1883114 ONTARIO	)	<i>Spencer Toole, for the Plaintiffs</i>
LTD.	)	
	)	
Plaintiffs	)	
	)	
– and –	)	
	)	
CERTAS HOME AND AUTO	)	
INSURANCE COMPANY o/a	)	
DESJARDINS INSURANCE COMPANY	)	<i>David Zarek and Alexander Reyes, for the</i>
	)	<i>Defendant</i>
Defendant	)	
	)	
	)	
	)	
	)	HEARD: March 26, 2026

AKAZAKI J.

REASONS FOR JUDGMENT

OVERVIEW

- [1] Certas Home and Auto Insurance Company moved for summary judgment, on the grounds that the business interruption insurance it issued to Carr Law did not cover the shutdown of the law office beyond the time required to complete physical repairs to the building. The office closure occurred after arsonists and gunmen dispatched by organized criminals in the Toronto tow truck industry, intent on closing the firm’s anti-fraud practice, set fire to the office’s reception area and sprayed bullet fire through the front doors. As a result of this incident, all the firm’s insurance clients pulled their files and caused the firm to close indefinitely.
- [2] This is not the first Canadian insurance case involving loss from criminal firearm discharge. However, it appears to be the first involving a claim for business interruption

coverage resulting from the consequence of an organized crime attack on property as an act of intimidation intended to stop the business' operations.

- [3] Because of the prolific success of Ms. Lisa Carr's law firm in defending insurers against fraudulent automobile collision claims, the Toronto-area tow truck operators behind the scheme dispatched their minions twice to set fire to the firm's offices. In August 2019, a hitman attempted to murder her. She would be dead, had the gun aimed at her head not jammed when he pulled the trigger. A few days later, another gunman arrived to warn an associate lawyer of the firm to stop suing his "friend", or she would be murdered. On September 6, 2019, the second gunman fired seven shots through the front office doors, causing the receptionist to drop to the floor and being showered by glass. Ms. Carr reported the incidents to York Regional Police. She and her husband went into hiding.
- [4] The York Regional Police arrested both men. Nevertheless, the organized criminals who hired them were unknown. The two men had been hired by someone, and they were not revealing that person's identity. The police officers told Ms. Carr that the law firm must remain shuttered. They refused to provide paid duty protection, and no private security company would accept the assignment. She hired movers to relocate office equipment to her home. Because it was pre-pandemic, neither the firm nor the Ontario courts were equipped to allow the lawyers to conduct litigation remotely. At the very least, Ms. Carr and her colleagues would have had to commute to courthouses to attend hearings and thus expose themselves to being followed back home.
- [5] The day after the shooting, the Insurance Bureau of Canada ("IBC") convened an urgent meeting with Ms. Carr and the representatives of her insurer clients. The clients all refused to allow Ms. Carr to use their claims office addresses for court documents, for fear that their claims offices' windows could be targeted. They then individually instructed the firm to return their files. Certas, who insured the building and the law firm's property, was the first to pull its files. Ms. Carr attempted to rebuild her firm's practice by associating with another law firm. Her team proposed to work independently from a remote location, while the sister firm would send its lawyers to any court attendances. Despite these attempts to salvage the practice, the insurance companies declined to reinstate Carr Law as their lawyers on the files.
- [6] The gunmen targeting the firm are now behind bars. Their sentences appear in reasons reported at 2022 ONSC 6737 and 2023 ONSC 5329. However, the members of the network who authored this incident remain at large. Like the heads of a Hydra, new recruits can be hired to replenish the ranks to terrorize the next iteration of the Carr firm, if it were to resume the same line of work.
- [7] The Certas policy insured Ms. Carr's professional corporation and the holding company from which the firm leased the office building. They submitted a common Proof of Loss in the standard IBC form in the amount of \$5,285 under the building coverage for the glass door replacement and \$1.4 million under the business interruption coverage as a valuation of the lost fees during the 12-month period following September 6, 2019.

[8] Certas paid the door replacement claim and certain accounting costs under the main property damage coverage. It had previously covered the fire damage. For the business interruption, it paid out \$25,000 for commercial losses during the days required to restore the office door. It declined the business interruption claim beyond that interval. On the face of the record, there was no formal declination letter from Certas explaining its coverage analysis and its grounds for denial. In the motion, it set out the following grounds for maintaining its off-coverage position:

- (1) the law firm did not close as a result of direct physical loss or damage to insured property;
- (2) loss of use or occupancy is not direct physical loss or damage and is excluded by s. 6B i) of the Commercial Property Broad Form; and
- (3) business income interruption suffered by the firm from the closure was not “in consequence of” the loss or damage.

[9] Carr Law (the name I will use for both plaintiffs) submitted that an ordinary insurance coverage analysis, following general common law principles of insurance contract interpretation, must conclude with a finding of coverage for the extended closure of the law firm’s business. Certas did not disagree with this approach. Its grounds for coverage denial focused on the three points described above. After addressing the procedure on the motion, my coverage analysis will follow the ordinary analysis.

[10] My decision to declare business interruption coverage in Carr Law’s favour will follow these points:

1. Summary Judgment Procedure
2. Framework for Interpreting the Certas Business Interruption Form
 - a. General Principles
 - b. Risk Allocation Structure
 - c. Subject Matter
3. Coverage Grant
 - a. Meaning of “Interrupted” as the Occasion of the Loss
 - b. Interaction of “as a result of” and “direct physical loss or damage from an insured peril”
 - (i) “direct physical loss or damage from an insured peril”

- (ii) “as a result of” – judicial treatment
- (iii) “as a result of” – its meaning in the Certas business interruption coverage

4. Exclusion for Loss of Use or Occupation under s. 6B i) of the Commercial Property Broad Form

1. SUMMARY JUDGMENT PROCEDURE

- [11] Counsel for the parties agreed that the motion could be treated as a “boomerang” summary judgment, as contemplated in *Saxberg v. Seargeant Picard Incorporated*, 2024 ONCA 931, at para. 40. The “boomerang” dynamic of the summary judgment motion satisfies procedural fairness and judicial economy: *Drummond v. Cadillac Fairview Corporation Limited*, 2019 ONCA 447, at paras. 13-14; *1062484 Ontario Inc. v. McEnery*, 2021 ONCA 129, at paras. 37-40, leave to appeal refused, [2021] S.C.C.A. No. 125.
- [12] If I granted Certas’ motion, the action should be dismissed. If I dismissed the motion, Carr Law would seek a declaration that the Certas policy covered business interruption losses beyond the last repairs to the building, for up to 12 months post-loss. The amount of the loss would be sent to a trial, as opposed to a r. 54 reference, because the application of the quantification provisions in the contract requires some determinations of mixed fact and law. That said, the parties’ agreement is not binding on me, and I must consider the motion in accordance with established principles under r. 20 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.
- [13] Rule 20.04(2)(a) requires the court to grant summary judgment if it is satisfied that there is no genuine issue *requiring* a trial with respect to a claim or defence. In *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87, at paras. 49-50, the Supreme Court of Canada’s guidance was that there will be no such genuine issue, if the record allows the court to (1) make the necessary findings of fact, (2) apply the law to the facts, and (3) be satisfied that the process is a proportionate, more expeditious, and less expensive means to achieve a just result compared to a full trial. These principles are necessarily interconnected.
- [14] If the court cannot determine whether a genuine issue requiring a trial exists after these three considerations, rr. 20.04(2.1) and 20.04(2.2) permit the use of additional fact-finding powers. These additional fact-finding powers are the weighing of evidence, evaluating credibility of a deponent, drawing reasonable inferences, and the direction of a mini trial of limited *viva voce* evidence: *Hryniak*, at para. 66.
- [15] Certas accepted Ms. Carr’s narrative of events as presented. In fact, it relied on the same facts to separate the physical damage from the arson and gun attacks from (a) the insurer clients’ independent decision to pull their litigation files and (b) the decision to give up

on re-opening the firm. As in any exercise in interpretation of contracts, the factual elements of the insurance coverage analysis must be restricted to their objective significance. I agree with Certas that evidence of Ms. Carr's subjective decision-making is immaterial to the resolution of the issues. Therefore, I agree with the parties' assessment that the record contains sufficient common ground to make the necessary findings of fact to apply the general interpretive principles. Certainly, no retelling of the firm's ordeal at trial is necessary to extract the necessary objective findings.

2. FRAMEWORK FOR INTERPRETING THE CERTAS BUSINESS INTERRUPTION FORM

- [16] Canadian insurance jurisprudence applicable to this case consists of general principles derived from contract law. The Certas business insurance package sold to Carr Law also followed two relevant insurance form drafting conventions. The all-risk nature of the policies defined the availability of financial indemnity through an alternating structure of coverage grants, exclusions, and exceptions to exclusions. The package also associated the business interruption coverage with the property insurance, by requiring physical loss or damage as a condition of any claim for loss of business income. The following sets out my framework for reading the business interruption insurance form, in accordance with these points.

a. General Principles

- [17] During the second half of the 20th century, Canadian courts often construed insurance policies as belonging to a separate category of contracts. While that remains true in some respects because of provincial regulation of the insurance industry, that earlier case law tended to read insurance policies heavily in favour of policyholders, as if they were long versions of disclaimers on the backs of coat check or parking lot tickets. The high point of this approach was the Supreme Court's decision in *Reid Crowther & Partners Ltd. v. Simcoe & Erie General Insurance Co.*, [1993] 1 S.C.R. 252. At p. 269, which seemed to rank interpretive rules in a priority favouring insureds or against insurers as the first and not the final resort. McLachlin J. (as she then was) stated:

In each case, the courts must interpret the provisions of the policy at issue in light of general principles of interpretation of insurance policies, including, but not limited to:

- (1) the *contra proferentem* rule;
- (2) the principle that coverage provisions should be construed broadly and exclusion clauses narrowly; and

(3) the desirability, at least where the policy is ambiguous, of giving effect to the reasonable expectations of the parties.

- [18] This approach departed from the general law of contracts, which prioritized enforcement of plain wording ahead of court-made rules for resolving ambiguities. In a series of decisions this century, notably *Ledcor Construction Ltd. v. Northbridge Indemnity Insurance Co.*, 2016 SCC 37, [2016] 2 S.C.R. 23, at paras. 49-52; and previously in *Progressive Homes Ltd. v. Lombard General Insurance Co. of Canada*, 2010 SCC 33, [2010] 2 S.C.R. 245, at paras. 21-24, the Supreme Court largely harmonized insurance law with general contract law. In so doing, it also reversed the priority of the above interpretive criteria.
- [19] The first principle applicable to insurance policies is, in the absence of ambiguity, to give effect to clear language, in the context of the whole contract. There is no thumb on the scale of justice favouring policyholders, at least at this stage. Insurers enjoy freedom to limit their risk, provided they do so clearly.
- [20] Secondly, if the language is ambiguous, the court must consider the reasonable expectations of the parties, but only as supported by the text. The reading must not lead to unrealistic results outside the commercial atmosphere in which the parties contracted the policy, and standard forms should be read with a measure of consistency.
- [21] Finally, if there remains ambiguity, the court may construe the policy *contra proferentem*, i.e., against the drawer of the contract, especially if the policy is a standard form amounting to a contract of adhesion. The effect of the rule can be a broad or liberal reading of coverage grants and a narrow construction of exclusions.
- [22] This tie-breaking nature of the last-resort rule for resolving ambiguity is grounded in the parties' different roles in the formation of the bargain, between the insurer's role in drafting the terms and the insured's absence in that process. In Canada, the rule finds its origin in Estey J.'s reasons in *Indemnity Insurance Co. of North America v. Excel Cleaning Service*, [1954] S.C.R. 169, at pp. 179-180, reaffirmed in *Consolidated Bathurst v. Mutual Boiler*, [1980] 1 S.C.R. 888, at p. 900, both adopting Lord Greene's statement in *Woolfall & Rimmer, Ltd. v. Moyle*, [1942] 1 K.B. 66, at p.73, which reads as follows:
- I cannot help thinking that, if underwriters wish to limit by some qualification a risk which, prima facie, they are undertaking in plain terms, they should make it perfectly clear what that qualification is.
- [23] The law of Ontario has long favoured vigorous resolution of ambiguities in favour of insureds, short of rewriting the contracts: *Alie v. Bertrand & Frere Construction Co. Ltd.* (2002), 62 O.R. (3d) 345 (C.A.), at para. 219. Indeed, the court may refuse to read a contractual provision in the manner proposed by the insurer, even if such a reading makes logical sense from the insurer's perspective: *AXA Insurance (Canada) v. Ani-Wall Concrete Forming Inc.* (2008), 91 O.R. (3d) 481, at para. 30.

b. Risk Allocation Structure

- [24] The Certas property and business interruption policies were all-risk policies. This differentiated it from other types of policies insuring against specific perils. (The original fire insurance policy, as described in Part IV of the *Insurance Act*, R.S.O. 1990, c. I.8, was such a type.) As an all-risk policy, it initially covered every possible risk and limited insurers' exposures by excluding specific perils. It then limited the scope of exclusions by providing exceptions.
- [25] The alternating structure of the all-risk policy was a one-size-fits-all method of mass-marketing insurance to all kinds of businesses with a wide range of risk profiles. It resembled but must not be confused with the insurance law principles for resolving ambiguities by construing coverage liberally and exclusions narrowly. The all-risk coverage grant was perforce wider than the exclusions, which were in turn wider than exceptions. Although, in *Progressive Homes*, at paras. 26-28, Rothstein J. described policies insuring commercial general liability ("CGL"), the alternating structure applies to most all-risk insurance forms.
- [26] As I will explain later, the alternating structure of the Certas all-risk property policy covered the arson fires and gunfire damage through an exception to the exclusion for the peril of criminal acts. This coverage brought the damage from the organized criminal acts into the business interruption policy. The extent to which that coverage triggered indemnity for economic loss depended on the language connecting the loss of earnings to the property damage.

c. Subject Matter

- [27] A third method by which Certas packaged the business insurance policies sold to Carr Law was by subject matter. Subject matter does not determine the construction of individual policies, but it can provide context and commercial background, in accordance with general contract law as stated in *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53, [2014] 2 S.C.R. 633, at para. 47.
- [28] The Certas business interruption insurance in this case was a separate insurance policy included in the overall business insurance package that was "[s]ubject to the terms of the Commercial Property Insurance – Broad Form". That Broad Form covered "direct physical loss or damage" to an insured's building, equipment, stock, contents, and "all property". (The phrase "all property" was later defined as building, equipment and stock.) Certas sold Carr Law a business package of standard-form policies that included economic loss, provided the loss could be tied to a physical loss event defined by the property damage coverage in the Broad Form. The insurer's clear intention was to limit claims for loss of business income by requiring antecedent physical damage to bricks and mortar property.

- [29] This method of defining the risk underwritten by the insurer by tying coverage to the insuring agreement of another form differs from other strategies such as the *exclusion* of risks covered by other forms. In *Derksen v. 539938 Ontario Ltd.*, 2001 SCC 72, [2001] 3 S.C.R. 398, a steel plate flew off equipment being hauled on a highway and struck an oncoming school bus, killing a child and injuring three others. The automobile insurer disclaimed a duty to indemnify for loss caused by the failure to secure the plate to the equipment, a peril covered by the CGL. The CGL insurer argued the loss was excluded, because the loss was occasioned from an automobile accident. At paras. 41-48, Major J. concluded that separate but concurrent causes could trigger coverage separately under CGL and automobile coverage, even though the CGL form typically excluded indemnity for liability from a cause related to the automobile. Applying the principle that the insurer was obligated to indemnify only for damage flowing from the insured risk, the remedy was to apportion the indemnity by percentage apportionment according to relative involvement in the harm: at para. 61.
- [30] Unlike the mutual exclusions in CGL and automobile insurance, the Certas business interruption insurance was tied to another insurance policy, the Commercial Property Broad Form. Although the whole package included other insurance policies, the business interruption form was clearly adjunct to the commercial property coverage wording. As such, it must be read as an endorsement to the main property insurance form: *SIR Corp. v. Aviva Insurance Company of Canada*, 2023 ONCA 778, 490 D.L.R. (4th) 278, at para. 49, leave to appeal refused, [2024] S.C.C.A. No. 16. Applying the general interpretive principles, the court should not read the business interruption coverage in a manner not anchored in the physical property owned by the holding company and operated by the professional corporation. That said, the general purpose of insurance is to cover losses that are unforeseen: *Non-Marine Underwriters, Lloyd's of London v. Scalera*, 2000 SCC 24, [2000] 1 S.C.R. 551, at para. 69.
- [31] The business interruption form defined the *risk* by referring to the Broad Form's description of the peril of property damage by criminal acts reported to police. Once physical property damage from that peril triggered the business interruption coverage, the business interruption form separately defined the nature and duration of Certas' duty to indemnify for Carr Law's economic loss. How closely the Broad Form controlled the coverage in the business interruption form depended on the meaning of "as a result of". I will now turn to the coverage grant and analyze the interaction of these policy forms through those controlling words.

3. COVERAGE GRANT

- [32] Certas provided business interruption coverage under the following wording:

1. Indemnity Agreement

Subject to the terms of the Commercial Property Insurance – Broad Form and the terms below, in the event that the business of the Insured is interrupted as a result of a direct physical loss or damage from an insured peril, the Insurer shall pay the Insured the actual loss of “business income” and “rental income” sustained during the “indemnity period” in consequence thereof.

- [33] Certas’ duty to indemnify began with the operative clause starting with “the Insurer shall pay the Insured”. The condition triggering the obligation to pay was the “event” of the business interruption. To qualify for coverage, the event of business interruption must have been associated with “a direct physical loss or damage from an insured peril”. That association was defined by the words, “as a result of”. The meaning of this four-word phrase connecting business loss to the covered property damage ultimately determined whether Certas had to pay for Carr Law’s closure, for up to 12 months.
- [34] Certas argued that the concluding phrase “in consequence thereof” connected the business interruption loss to the physical loss or damage. It referred to repetition of the words “in consequence of” in the description of the indemnity period in s. 9 f):
- f) “Indemnity period” means the period beginning with the date of the loss or damage and ending no later than twelve (12) consecutive months ... thereafter during which the results of the business shall be affected in consequence of the loss or damage.
- [35] The plain and grammatical sense of the phrase “in consequence thereof” in the coverage grant connected the compensable loss of business or rental income to the “event” of the business interruption. The phrase did not displace or alter the words “as a result of” that Certas employed to connect the business interruption to the physical loss or damage. I have considered whether the word, “affected,” could have revealed an intention to loosen the circumstantial and causal relation defined by “as a result of.” I did not find that it did.
- [36] In the definition of indemnity period, the words “in consequence of the loss or damage” modified the state of being “affected.” The word “affected”, in the context of the 12-month duration, clearly intended to capture the decline in business for up to 12 months somehow influenced by the physical loss or damage. A business whose premises is damaged by fire could continue to suffer financial loss after completion of repairs. For example, it may take time to re-hire staff or to regain lost custom. This feature of the business interruption form dispels the idea that the scope and duration of indemnity for financial loss ends abruptly once the building restoration crew complete their work and the insured can physically reopen for business. Once triggered by a physical loss covered by the Broad Form, the business interruption insurance provided indemnity for financial loss until the insured firm returned to pre-loss results or 12 months, whichever occurred earlier.

- [37] Certas conceded that the property damage from the arson fires and gunshots came within the insured perils of the all-risk insurance. Certas' position was that the risk or threat of future attacks could not found a claim for business loss after the restoration of the property. Relying on *Mississippi River Power Corporation v. Municipal Electric Association Reciprocal Insurance Exchange*, 2014 ONSC 3784, 36 C.C.L.I. (5th) 317, at para. 27, Certas argued that the insureds were not entitled to business interruption coverage for halting operations to avoid future loss or damage to property. The decision to close the firm indefinitely did not constitute physical loss or damage and did not arise from repair to prevent an "imminent peril" of such property loss or damage. The economic value of the practice did not qualify independently as property because it lacked physical existence.
- [38] The concession of coverage for the physical damage set up Certas' argument for dissociation of the prolonged business loss from the property damage on two grounds. First, the closure of Carr Law's insurance defence practice brought the business loss outside the necessarily temporary meaning of "interrupted." The insurer differentiated the closure of the law firm's practice as a business decision from physical inability to resume business at the office building. Second, the word "direct" limited the business interruption coverage to a physical cause and effect between the fire and ballistic damage and the firm's inability to carry on business. The insurer's justifications for the denial of coverage could all be funnelled into these two points.
- [39] Carr Law's position was that interpreting the insurance policy to afford coverage for losses up to one year after the gunshot incident followed the plain and grammatical reading of the coverage grant in the "Indemnity Agreement" clause. They argued the extended closure of the firm was an interruption "as a result of" the fire and gun damage to the building, because these criminal acts were intended to stop Carr Law from representing insurance clients in fraudulent claims associated with the towing industry. The only real procedural difference on the issues was the ordinary burden on the policyholders to bring the loss into the insuring agreement, followed by the insurer's burden to establish any exclusions.
- [40] My analysis of the coverage motion will now proceed through the first part of the coverage grant, in the order in which Certas advanced its points:
- (a) Meaning of "Interrupted" as the Occasion of the Loss
 - (b) Interaction of "as a result of" and "direct physical loss or damage from and insured peril"
- a. Meaning of "Interrupted" as the Occasion of the Loss**
- [41] To be afforded coverage under the business interruption form, the insureds' loss must be "in consequence" of "the *event* that the business of the Insured is interrupted" (emph. added). The "event" was the interruption. How long the interruption lasted in fact was

only limited in terms of the period of Certas' liability. That period, the "indemnity period," was defined in s. 9 f) as 12 months.

- [42] The general wording of the business interruption form allowed resumption of a business after a property loss to depend on various factors, including the operators' effort and industry, the market for its products or services, and its ability to restore its workforce. The "results of the business," as defined in s. 9 f), could be "affected by the consequence of the loss or damage" indefinitely. The word, "affected," is even less forceful than "interfered with", interpreted by Pitfield J. in *EFP Holdings Ltd. v. Boiler and Inspection and Insurance Co. of Canada*, 2001 BCSC 1580, 34 C.C.L.I. (3d) 212, at para. 16, aff'd 2002 BCCA 637, as a lesser event than "interrupted". The requirement that Certas continue to pay for business interruption after completion of property restoration and until resumption of pre-loss business results or up to 12 months plainly reflected the business reality that a shut-down business, after restoration, could not be expected immediately to resume the same level of activity the day after the paint dries. The physical property damage triggered the business interruption coverage. Return of operations to pre-loss levels determined the amount and duration of the indemnity.
- [43] Certas could have limited its exposure to losses involving permanent closure prior to the expiration of 12 months from the date of loss, through express wording. Instead, it opted to cap the standard indemnity period at 12 months, for as long as the insured's financial results remain affected by the loss or damage.
- [44] Certas contended that "interruption" implied a temporary state and did not extend to permanent or voluntary closure. I agree that interruption could connote eventual resumption of the halted activity, once the impediment ended. The original Latin root of the past participle, *interruptus*, also connotes a break in continuity by intervention of an external factor. Nevertheless, it would be wrong to construe this association with temporariness so categorically that it excludes businesses whose operations both stopped and did not resume. Interruption is the break in continuity. Once the business is interrupted, the amount of indemnity depends on the *results* of the business being *affected* by the loss or damage, as stated in s. 9 f) and recited above. I agree with Certas that, ordinarily, the physical damage would have lessened in terms of affecting the business, soon after the repairs. The complication here, for both sides, was the message of intimidation embodied in the physical damage inflicted on the office building.
- [45] The law firm did not close without a serious attempt at business resumption. Ms. Carr and her closer associates attempted to regain the firm's insurance law practice. It downsized its personnel and became associated with another firm, as a vehicle for finding creative ways to resume the work. Despite proposing various workarounds such as limiting Ms. Carr and her associates to preparation of court documents and having the other firm's lawyers attend hearings, the insurer clients did not restore Carr Law's files. Certas did not contest Ms. Carr's evidence, from the meeting convened by IBC, that the insurers pulled the files and refused to allow their claims offices' mailing addresses to be used for court documents out of fear of being targeted for similar criminal damage attacks.

- [46] An insurance defence litigation firm cannot simply reopen and start new lawsuits for it to defend; in the way a restaurant can reopen to the public or a factory can resume manufacturing. It cannot rely on advertising to bring in new files. Having devoted the practice to a niche, this firm also had no real prospect of reforming as a general insurance law firm within 12 months.
- [47] Regardless of the availability of other methods to limit the insurer's exposure, an interpretation of "interrupted" limited to purely temporary closures would have been the less reasonable and thus unfair choice between two meanings that a word in the policy could bear, as described by Estey J. in *Consolidated Bathurst*, at pp. 901-902. A fair and contextual reading of the insurance form would be that business interruption is the break in continuity of the insured's business. After resumption of operations, continuity is not considered restored for the purposes of ending indemnity until the business' financial results are no longer affected by the loss or damage, or until the expiry of 12 months.
- [48] The word "interrupted" in the coverage grant was therefore not restricted to temporary closures and could have applied to the permanent closure, at least for the foreseeable 12 months, of Ms. Carr's law practice. Indemnity for the financial effect of that closure also depended on the relation between the interruption and the "direct physical loss or damage from an insured peril". The insurance contract defined that relation by use of the phrase "as a result of". (The ancillary phrase, "affected in consequence of" would be relevant to the damages trial, but not to the availability of coverage as the parties framed the issue here.) The meaning of "interrupted" as a forced cessation without defined end or expected resumption is well supported in the wording of the insurance policy form, within the ordinary and grammatical sense. There is no need to apply any special judicial techniques for resolving ambiguities.
- [49] I will now turn to the second part of the coverage analysis: whether the business interruption insurance afforded the law firm coverage for business loss beyond the closure of the office building for repairs.

b. Interaction of "as a result of" and "direct physical loss or damage from an insured peril"

- [50] Carr Law's root argument was that the decision to close the firm was made for it by the overnight evaporation of its business. The firm became unviable, once the insurers ordered the return of 2,500 files, in response to fear of reprisals after the arsons and gun fire attacks inflicted on the office building. From their perspective, the closure resulted from the attacks on the building as naturally as night followed day. There was no dispute that the fire and bullet damages were directly caused by an insured peril. Carr Law relied on a plain and grammatical reading, by inserting the facts into the verbal formula of the coverage grant. The "event" of business interruption occurred; the business closed. The decision to close for good was an expected result of the physical attacks on the property. Therefore, Carr Law argued, the plain and grammatical meaning of the coverage grant

was clear and ought to be construed in favour of affording coverage for the law firm's shutdown for the balance of the 12-month period.

- [51] Certas responded that the law firm's closure was not business interruption as a result of those physical losses or damages, once the insurer's contractors restored the offices to their physical pre-loss state and the legal staff had an opportunity to settle back into their workstations. The insurer disassociated the temporary business closure in the immediate aftermath of the last building attack from the decision to shut the firm after the clients' instruction to return the files. Certas characterized Carr Law's reasoning to shut down the firm because its office was attacked by fire and bullets as being literal or subjective. Instead, the real reason for the closure was the threat to life of the firm's staff and principal and the insurers' withdrawal of their retainers. The fire and bullet damages could be extricated from the proximate cause of the business failure.
- [52] The opposing parties both relied on the coverage wording as unambiguous. Perhaps that could be a clue that the wording was ambiguous. However, the general principles require the court first to determine whether the language imported a clear meaning. To do this, one must first address the interaction of "as a result of" and "direct physical loss or damage from an insured peril". I have already found that the "event" of the business being "interrupted" can include a permanent closure, limited only by the 12-month indemnity period. How long the business interruption insurance required Certas to pay for the business loss beyond the restoration of the office depended on the "direct physical loss or damage from an insured peril" and its relation to the interruption as defined by the phrase "as a result of".

(i) "direct physical loss or damage from an insured peril"

- [53] The phrase "direct physical loss or damage from an insured peril" was a self-contained description of the loss or damage from which the business interruption must result. Working inside out, the adjective "physical" described the loss or damage. The adjectival phrase "direct ... from" described the relation between the loss or damage and the insured peril. In this instance, the insured peril was defined by the main Commercial Property Broad Form as any risk that is not excluded. Certas could have placed the adjective "direct" earlier, ahead of the word "result." On the face of the form, "a result" could not be burdened with the qualification "direct." The phrase "as a result of" therefore cannot be synonymous with "as a direct result of."
- [54] This reading also found support in the Commercial Property Broad Form, to which the business insurance was servient. The opening words of the business interruption coverage grant expressly made the wording subject to the Broad Form. In s. 1 of the Broad Form, the insurer agreed to indemnify against "direct physical loss or damage" caused by an insured peril. The use of mirror wording, where the business interruption indemnity agreement referred to the Broad Form, meant the descriptions were in both instances integral and self-defining. In *Ledcor*, at paras. 39-43, the Supreme Court

recognized the importance of consistent interpretation of similarly worded provisions in standard form agreements. I apply that guidance and construe no intention that “direct physical loss or damage” in the business interruption form should have wider semantic influence than the same phrase in the Broad Form, where it appeared thus:

1. Indemnity Agreement

In the event that any of the insured property is lost or damaged during the policy period by an insured peril, the Insurer will, subject to all the terms of the policy, indemnify the Insured against the direct physical loss or damage so caused [Emphasis added.]

[55] The property insurance afforded coverage only for physical loss or damage and limited it further to such loss or damage caused directly by an insured peril. This wording informed the parties that “direct” in the combination “direct ... from” in the business interruption form described the same causal chain as the Broad Form between the loss or damage and the insured peril. Direct physical damage or loss is what the Broad Form covered, not consequential loss. Business loss is consequential in nature and distinct from the cost of repair or replacement of damaged property. The business interruption form employed the words “as a result of” to connect the physical loss with the business interruption and the words “in consequence thereof” to connect the business loss to the business interruption. The language used in the Broad Form thus precluded a reading of “direct” narrowing the meaning of the phrase “as a result of” in the business interruption insurance form.

[56] Section 5 of the Broad Form defined insured perils as “all risks of direct physical loss of or damage to the insured property.” Although s. 6B l) iii) contained peril exclusions for foreseen criminal acts, immediate notification of police and the insurer of such acts made the exclusion inapplicable. The fire damages and the shattered doors represented the phenomena described in the business interruption form as “direct physical loss or damage from an insured peril”. The express *inclusion* of immediately reported criminal acts to the all-risk coverage meant that Certas was bound by its method of defining the risk of business interruption. If one swapped the general wording of the coverage “from an insured peril” for the specific and operative wording, the grant would read:

... in the event that the business of the Insured is interrupted as a result of a direct physical loss or damage from an immediately reported criminal act
...

[57] The parties did not dispute that the damage to the office from the arson and gun attacks constituted such “direct physical loss or damage from an insured peril”, for which Certas indemnified the building owner and law firm under the Broad Form property coverage. They did dispute whether the law firm’s closure constituted business interruption “as a result of” the property loss or damage. The court must therefore interpret the meaning of that phrase, in allocating, as between the insurer and the policyholders, their financial risk of business interruption. Certas chose not to insert another “direct” or other limiting

word ahead of the phrase. The court must construe the phrase contextually, with neither the word “direct” to narrow it nor its antonym “indirectly” expand its scope.

- [58] Before moving more specifically to the meaning of “as a result of”, I note the distinction between *physical* property loss or damage and loss of *use or access*. Relying on American case law upholding coverage denials under business interruption insurance for economic losses arising from civil authority orders to shut down businesses resulting from the COVID-19 pandemic, Penny J. in *Workman Optometry Professional Corporation v. Certas Home and Auto Insurance Company*, 2023 ONSC 3356, 38 C.C.L.I. (6th) 122, at para. 143, aff’d 2024 ONCA 479, 42 C.C.L.I. (6th) 56, at para. 8, held that the absence of physical loss or damage was fatal to the claim for certification of a class action on behalf of business interruption claimants. The record before him included medical evidence of the contamination of the class members’ places of business as the impetus for the government mandates. At para. 139, the motion judge stated:

I do not accept the plaintiff’s attempt to recharacterize the purpose for the civil orders as being based on the ubiquity and physical effect of SARS-CoV-2 on insured premises and property. ... Indeed, a fair reading of the civil orders themselves makes it clear that the purpose of these orders was to prevent or mitigate harm to human health, not to property.

- [59] Certas argued that Carr Law’s shutdown resulted from warnings from the police department that it ultimately could not guarantee the safety of the law firm’s personnel. I did not construe these interactions with police as orders from a civil authority. After their investigations concluded, the police had no authority to prevent the reoccupation of the office building. The police only provided an expert assessment of the circumstances created by the arson and shooting as demonstrating the willingness of the criminals’ agents to carry out their threats.
- [60] Instead, and unlike the situation of the class plaintiffs in *Workman*, the Carr Law offices were damaged physically. In *Workman*, at para. 74, the court found that the viruses did not materially alter the surfaces they contaminated. I did not read Penny J.’s decision as precluding coverage for business interruption where an insured peril had directly inflicted physical property damage for the express purpose of shutting the business down.
- [61] I conclude that the phrase “direct physical loss or damage from an insured peril” encapsulated the fire and ballistic damage from the arsons and gunfire as the proximate cause of the damage and an insured peril (“direct ... from”). The insured peril was necessary for coverage. The perils of arson and gunfire were insured by the Broad Form, by combining the all-risk grant in s. 5 and the police and insurer notification exception to the criminal act exclusion in s. 6B 1) iii). Construing the phrase only in terms of the artefacts of burnt furnishings and shattered glass doors while disregarding the criminal acts that caused them would amount to a selective reading that the text simply cannot bear.

- [62] Inserting the facts of this case into the standard wording, the Certas business interruption form provided coverage for physical property damage from criminal arson and gun attacks intended to close the law firm. The meaning of the phrase, “direct physical loss or damage from an insured peril”, is unambiguous when considered as an integral grammatical unit and is consistent with the analogous wording in the Broad Form.
- [63] The intersection of property damage and business cessation by the perpetrators’ making of threats through such property damage requires the court next to consider the meaning of “as a result of.”

(ii) “as a result of” – judicial treatment

- [64] One of the exceptions to the post-*Sattva* analytical framework for contract interpretation as fact-finding exercise is that common phrases in standard form insurance contracts develop their own jurisprudence and precedential value: *Ledcor*, at para. 46. The phrase “as a result of” belongs to a handful of expressions in use in insurance contracts and in legislation, including various grammatical variants of “arising from”, “caused by”, “directly caused by”, and “because of”. The interpretation of such standard wording can entail a question of law requiring the court to consider how other courts have construed it. I will survey the jurisprudence for guidance to determine where “as a result of” sits in the range of words used to define insurance coverage.
- [65] The case law describes how different insurance policies, including those regulated by statutory provisions, have used different methods to allocate risk between insurer and insured when a quantifiable loss coincides with an external source of prejudice. In most instances, the two techniques for allocation are circumstantial and causal.
- [66] The courts have repeatedly stated that interpreting the causal or circumstantial connection between an event and insurance coverage is not a metaphysical exercise. It is an intensely practical issue arising from a regulated financial product underpinning a functioning society and economy. In the consumer insurance context, policies are described as “peace of mind” contracts: *Whiten v. Pilot Insurance Co.*, 2002 SCC 18, [2002] 1 S.C.R. 595, at para. 129. Business insurance bundles business interruption coverage with property insurance to protect business continuity, because the property is used for profit and has no intrinsic or sentimental value. Typical perils for which insured buy policies include fire, flooding, windstorm, and other common events.
- [67] Interpretation of standard wording entails application to both common and unusual fact patterns. The courts should remain wary of a frequentist or probabilistic bias that may narrow or expand coverage unduly by relation to the types of coverage cases that parties litigate. The insurance bargain involves the payment of a premium for a fortuitous risk. Carr Law’s very niche market carried risks associated with litigating insurance fraud perpetrated by criminal organizations. However, the insurance package was an off-the-shelf product sold to a broad range of small and medium-sized businesses. The court

must concern itself with the meaning of the words in the jurisprudence and not with the individual facts of other cases. I will review the use and jurisprudential treatment of standard wording in insurance contracts expressing circumstantial and causal relationships

- [68] A typical circumstantial phrase is “arising from”. It implies a loss occurring during a type of activity. Automobile insurance employs this language, to provide coverage to drivers and passengers, because the risk is associated with an activity in which the insureds are expected to engage. Another, often used in builders’ risk policies for a different defining purpose, is “in the course of”: *William Osler Health Centre v. Compass Construction et al.*, 2015 ONSC 3959, 51 C.C.L.I. (5th) 244, at para. 9.
- [69] In contrast to circumstantial wording, causal phrases connect losses with insured perils. Policies of first-party property and third-party liability insurance tend to connect losses with risks causally. In an all-risk policy, the need to tie the loss to the peril is important because some perils are subject to exclusion clauses. That said, not all property insurance indemnifies against all risks. Recreational properties tend to be covered for defined risks only. Homeowner and business policies insure against all risks, subject to some defined exceptions, because the expected constant occupation minimizes the moral hazards associated with unoccupied buildings such as second homes or cottages. Property and CGL policies also use causal language to exclude coverage for risks the insurers expect clients to insure under separate insurance products, such as automobiles and marine vessels.
- [70] It would be incorrect to categorize one allocative technique as being inherently broader or more restrictive than the other. Courts have construed circumstantial phrases such as “arising from” as broader than causal phrases such as “caused by”, but the comparison depends on context. An accident arising from an automobile collision requires no causal analysis for the purpose of insurance. Driving while intoxicated could affect availability of coverage, even if the accident was not caused by that factor. However, once one steps out of the vehicle and is injured, distance from direct connection to the use or operation of an automobile attenuates coverage. In contrast, causal language can connect damage to occurrences across different timelines, such as the pouring of defective concrete and the manifestation of building damage months or years later. In liability policies, the phrase “caused by an occurrence” can be sufficiently vague to require insurers to use wording such as damage taking place within the policy term to limit time on risk: *Alie*, at paras. 91-94.
- [71] Neither party’s counsel was able to identify a reported case interpreting “as a result of” in terms of insurance coverage for the closure of a business occasioned by intimidation by organized criminals in the form of physical damage. It may be that the typical business victims do not come forward or sue their insurers. In *Diamond Auto Collision Inc. v. Economical Insurance Group*, [2005] I.L.R. I-4427 (Ont. S.C.), at para. 9, aff’d 2007 ONCA 487, 227 O.A.C. 51, the court held that a tow truck operator’s loss of business arising from rumours stemming from an arson attack “cannot be considered to be a direct result of the fire.” In that case, the arsonists destroyed trailers storing

equipment and parts and did not affect the towing operations beyond the loss of custom. The Court of Appeal dismissed the appeal, but without addressing the trial judge's finding regarding direct causation: 2007 ONCA 487, at para. 42. However, para. 4 of the appellate decision contained the wording of the business interruption coverage missing from the trial decision. The form afforded coverage for:

the actual business loss sustained by the Insured and expenses necessarily incurred to resume normal business operations resulting from the interruption of the business... *as a direct result* of an insured peril.

(emph. added)

- [72] Applying the facts to the above coverage wording, E. Macdonald J. stated at para. 9 of her trial decision:

I find that, even if such losses did in fact occur, any damages flowing from these causes cannot be considered to be a direct result of the fire. The policy provides for the actual business loss sustained by the insured and the expenses necessarily incurred to resume normal business operations resulting from the interruption of business, or the untenability of the "premises" when the "building" or the "business contents" are damaged as a **direct** result of an insured peril.

(Underlining added; bold and italics in the original.)

- [73] The trial judge's reasoning cannot be applied to Carr Law's business interruption claim, because the word "direct" in the business interruption form connected the physical loss to the peril but did not insert that modifier in the phrase, "a result of."
- [74] Although not conclusive, the trial judge's analysis implied that the business losses, had they been proven, could have been covered as "a result of" the damage caused by the fire, even if not "a direct result of" it. In para. 9 of the trial decision, the trial judge herself appeared to have some reservations about this conclusion, when she stated, "Arguably, the alleged loss is not covered" (thus landing on the same conclusion as the Court of Appeal, in navigating around the coverage issue, instead of deciding it).
- [75] Although *SIR Corp.*, at paras. 77, 96-100, concerned business interruption by reason of an order of a civil or military authority, the Court of Appeal has held it was necessary to insert the word "direct" into the phrase "as a direct result of" for the "as a result of" phrase to acquire a direct causal relationship, whereas the words "caused by" in another clause implicitly denoted a direct relationship.
- [76] My reading of *Diamond Auto* and *SIR Corp.* therefore suggests that "as a result of" cannot mean "as a direct result of". The absence of the word "direct" modifying the connecting phrase should not open it to being interpreted as "direct or indirect". Nevertheless, the apparent need to use "direct" to denote a tighter causal link suggests that the unmodified phrase does tolerate some degree of consequential causality. To

afford Certas the benefit of the word “direct” would interfere with the sense of the phrase in a manner wholly unfair to the insured. Because this wording appeared in a standard form, it would be an error of law to read “as a result of” as synonymous with “as a direct result of”.

- [77] Both Carr Law and Certas cited *Mississippi River and Liverpool & London & Globe Insurance v. Canadian General Electric Ltd.*, [1981] 1 S.C.R. 600, for the operation of the “imminent peril” doctrine for property insurance coverage for preventative action required to stop or mitigate physical loss against a peril that had already started to operate. In *Liverpool*, at p. 618, Estey J. described the principle:

[T]he peril stated to be imminent must be within the insured risks of the policy and ... the insured risk had “begun to operate as a peril” at the time of the taking of the preventive action which in fact brought about the damage to the insured.

- [78] The business interruption coverage wording, appearing at para. 11 of the *Mississippi River* decision, used the phrase “resulting from” to connect the interruption to the physical loss or damage. At paras. 25-27, the court considered the principle of “imminent peril” as justifying coverage for economic loss resulting from a plant shutdown to prevent inevitable catastrophic damage. The court declined to find for the insured, because the shutdown for repairs recommended by engineers entailed a probable but not an inevitable equipment failure.
- [79] Carr Law argued that it shut down the law practice to prevent the inevitable return of arsonists or gunmen to inflict further or more damage to the premises. Certas countered by stating that the real cause of the shutdown was a combination of concern for personal safety and the insurer clients’ withdrawal of their litigation files. Certas further argued that the virtual certainty that the criminals would send more agents to intimidate the law firm or even to murder its lawyers was not connected by a concern that such agents would return to inflict more damage to the office building. I agree with Certas’ position on this point.
- [80] The imminent peril principle cannot connect the likelihood of repetition of property damage to the decision to close the firm. Rather, the decision was an immediate consequence of insurer clients pulling 2,500 active insurance law files. Although the imminent peril to property did not assist Carr Law’s claim, it also did not restrict the connection represented by the words “as a result of” to additional property damage. Business interruption is not a subset of property damage. Rather, it is an effect of the property damage on the insured’s business. The imminent peril issue was therefore immaterial.
- [81] As seen in *Workman*, the cases dealing with the business interruption insurance generally quote language of standard business property policies similar to Certas’, but the issue in the case law tends to be the existence of physical damage *caused* by an externality, such as food perishing during a hydro blackout from lack of refrigeration.

See *Caneast Foods Limited v. Lombard General Insurance Company of Canada*, 2008 ONCA 368, 91 O.R. (3d) 438, at paras. 5, 9, and 24. In *Sklar v. Saskatchewan Government Insurance Office* (1965), 54 D.L.R. (2d) 455 (Sask. Q.B.), at para. 41, Sirois J. construed “as a result of” in relation to the noun “result”: “A result is something which follows as an actual consequence.”

- [82] The most that can be gleaned from the case law regarding the phrase “as a result of” or its variants is that it implies some element of causality both connecting the result with the event, damage, or loss and distinguishing it from those items. Use of the indefinite article “a” implies that the covered event or loss can be one of one or more results of an insured event. The choice of definite or indefinite article in an insurance contract can be significant: *Builders Capital (2014) Ltd v. Aviva Insurance Company of Canada*, 2022 ABCA 120, 39 Alta. L.R. (7th) 213, at para. 30. I will return to this distinction in the textual analysis of the phrase.
- [83] Disputes from the close cousin of property insurance, CGL insurance, provide many cases dealing with phrases connecting physical damage to perils. CGL policies already provide broad indemnity in respect of liability for third-party economic loss resulting from property loss and bodily injury. As seen in the Certas CGL policy issued to Carr Law, they insure against *liability*. The case law tends to concentrate on the inflection points of legal liability “because of” bodily injury or property damage “caused by an occurrence” taking place in the coverage territory.
- [84] In *Canadian Equipment Sales & Service Co. Ltd. v. Continental Insurance Co.* (1975), 59 D.L.R. (3d) 333 (Ont. C.A.), at 336, the Court of Appeal held that the dropping of a “coupon” by the contractor’s employee into a pressurized water pipeline was “injury to property” because the owner, “from that moment, had an imperfect or impaired pipeline.” A coupon was, as the etymology suggests, a portion cut out of a pipe for insertion of a fitting. The accidental entry of the coupon into the chemical plant’s cooling system, instead of falling out, required investigative meetings, X-rays of the pipeline, and other steps to locate it in case it blocked the system and caused a major fire. The insurer’s liability for the cost to the owner of investigating the destination of the coupon was a legal obligation “because of” the injury to property, as used in the CGL policy. The insurer was found liable, even though the insured never retrieved the coupon and the risk of cooling system failure never materialized.
- [85] The coupon case may provide a helpful comparison, because the court held that the insured had incurred expenses to act on the perceived imperative to retrieve the potential blockage, even though the pipeline ultimately continued to function without impairment. Unlike the projected or inevitable failure in *Mississippi River*, the insured event in *Canadian Equipment* was the accidental damage to the water pipeline that the dropped coupon represented.
- [86] In some instances, courts have interpreted CGL insurance policies containing the phrase “as a result of” or its variant, “resulting from.” In *Alie*, the Court of Appeal dealt with several CGL policies in relation to potential liability for injury or destruction of property

by the introduction of defective building materials. At para. 52, the insuring agreement for “Coverage B – Property Damage Liability” used such wording twice. It employed “resulting from” in clause (i) to extend coverage for liability to consequential loss of use resulting from injury or destruction. In clause (iii), “as a result of” appeared in the rip and tear coverage for liability for the removal or repair of property incorporating defective, unspecified, or unrequired concrete mixtures and components.

- [87] The Court of Appeal’s decision in *Alie* on this point dealt with the timing of the liability occurrence in relation to the policy term. The use of “as a result of” in the rip and tear provision was, however, instructive. The provision imported no necessity for injury or destruction, or even their probability. The phrase denoted justification on the part of the property owner to remove or repair the concrete structure and to claim liability on the part of the contractor or subcontractor who supplied or poured the concrete. The phrase “as a result of” thus imported a form of liability created by the presence of a deleterious condition – defective concrete – and not from any manifested or completed property damage. This wording carried a predominantly circumstantial meaning, as compared with a causal relationship with physical damage that had yet to occur. That said, coverage for the need to remove or repair concrete “as a result of” defective concrete mix also implied causality in terms of *motivating* repair or replacement.
- [88] Canadian jurisprudence does include claims by victims of gunshots for coverage from automobile insurers. The patchwork of cases connecting various forms of non-automobile casualty could ostensibly be helpful, because they almost inevitably entail some consideration of the relational wording between the injury and the ownership or operation of a motor vehicle.
- [89] Despite the abundance of this resource, including some connecting gunshot injuries to automobile use, the jurisprudence can provide a false resource for general insurance law. Judicial treatment of the connecting phrases in automobile insurance policies and related statutes depends heavily on public policy considerations. The changeable interpretive context originated with the origins in the law of limitations. Because the limitation periods for suits arising from automobile accidents were historically shorter (e.g., 2 years instead of 6 years, in pre-2004 Ontario), *defendants* sought to exploit circumstantial connections with automobiles to gain the benefit of the shorter interval.
- [90] In its seminal decision in *Dufferin Paving & Crushed Stone Ltd. v. Anger*, [1940] S.C.R. 174, at pp. 182 and 190, the Supreme Court of Canada applied the limitation period defined by the words “occasioned by a motor vehicle” to a suit for building damage from the vibrations emitted by cement mixers operating in front of the plaintiff’s house. The same expansive logic appeared in applying the limitation period to a claim against a repair shop for faulty brake work resulting in a car accident: *Heppel v. Stewart et al.*, [1968] S.C.R. 707, at pp. 710-11. These courts interpreted “occasioned by” to mean that the presence or involvement of a motor vehicle sufficed to invoke the statutory limitation, even though the claims were founded in nuisance and negligent repair and not directly for breach of the rules of the road.

- [91] In *Heredi v. Fensom*, 2002 SCC 50, [2002] 2 S.C.R. 741, at paras. 35-36, the Supreme Court reversed course from *Dufferin Paving and Heppel*. It refused to apply the words “damages occasioned by a motor vehicle” employed by the *Highway Traffic Act*, S.S. 1986, c. H-3.1, s. 88(1), to bar an action based on the two-year limitation period, even though the bus passenger’s injuries were directly attributed to the driver’s method of securing the passenger’s crutches to the vehicle. Holding that the involvement of an automobile had to be the dominant feature of the loss, the court held the limitation period did not apply.
- [92] Even in an instance where the plaintiff suffered injuries when a car fell on him from a garage hoist, an Ontario motions judge expressed reluctance to apply the dominant *Heredi* criteria for the limitation period, on a summary judgment motion: *Ford-Smith Machine Co. (Bankruptcy), Re*, 2005 CanLII 9671 (Ont. S.C.), at paras. 24-27.
- [93] These cases illustrate how the courts came to interpret the vague causal wording, “occasioned by” in a stricter sense, in line with the law of statutes of limitations. Nevertheless, the stricter construction was supported by the wording. “Occasioned by” implied a causal meaning related to an automobile’s vehicular purpose, compared to, say, “occasioned during.”
- [94] The advent of provincial compulsory no-fault automobile accident benefits insurance led the courts in the opposite direction, in large part to preserve the legislative object of diverting the social cost of automobile accidents from the tort system to no-fault insurance. This jurisprudence includes analysis of the availability of automobile insurance where individuals suffered injury from gunshots while operating a vehicle.
- [95] In *Amos v. Insurance Corp. of British Columbia*, [1995] 3 S.C.R. 405, the Supreme Court of Canada held that the victim of a shooting during a targeted gang attack could claim statutory benefits from the provincial automobile insurer. The question was whether the plaintiff’s injuries came within the wording, “arising out of the ownership, use or operation of a vehicle”. The court interpreted the phrase “arising out of” as broader than “caused by”, deserving a more liberal reading.
- [96] In paras. 16-28 of *Amos*, the court applied a two-part test, by asking whether (1) the accident resulted from the ordinary and well-known activities to which automobiles are put, and (2) there was some nexus between the injuries and the ownership, use, or operation of the vehicle. The court concluded that the claim satisfied the test. The victim drove away to flee the scene. Getting away from gun-toting assailants may not have been a common use of a vehicle, but it was ordinary and well known in the plaintiff’s situation. At para. 25, Major J.’s rationale for the causal connection may be instructive for the instant case:

The appellant’s vehicle was not merely the *situs* of the shooting. The shooting appears to have been the direct result of the assailants’ failed attempt to gain entry to the appellant’s van.

- [97] One would struggle to find a meaningful semantic or grammatical difference between “occasioned by” in the limitations context and “arising out of” in the insurance context, except the courts’ tendency to read statutes of limitation narrowly and to read insurance and benefits statutes broadly.
- [98] *Amos* may not have been the sole catalyst for legislative change, but it prompted parliamentary deliberations toward a general tightening of the availability of insurance accident benefits in Ontario. Ontario’s no-fault regime never fully replaced the availability of court actions for automobile accidents. Ontario courts briefly followed *Amos* because of similar causal wording, until the legislature amended the insurance regulation to require that the operation of a vehicle “directly causes” the accident injuring the claimant: *Chisholm v. Liberty Mutual Group* (2002), 60 O.R. (3d) 776 (C.A.), at paras. 19-20. This did not discontinue consideration of the *Amos* test in other insurance contexts. The first part of the test, the purpose to which the vehicle was used, remains part of Ontario law, even if the legislative change has eliminated the application of the second part, regarding the causal link. The need to insert the word “directly” did illustrate how that modifier has been used conventionally to constrain the availability of benefits.
- [99] In *Greenhalgh v. ING Halifax Insurance Co.* (2004), 72 O.R. (3d) 338 (C.A.), leave to appeal refused, [2004] S.C.C.A. No. 461, at paras. 24 and 50, the Court of Appeal held that frostbite, suffered by the claimant after her car broke down and required her to walk in the cold, did not meet the requirements of direct causation. In *obiter*, at para. 49, Labrosse J.A. equated the situational “dominant feature” test in *Heredi* with “the situation that most directly caused the injuries.”
- [100] In *Westmount (City) v. Rossy*, 2012 SCC 30, [2012] 2 S.C.R. 136, at paras. 51-53, the plaintiff was killed when a tree fell on his vehicle. The Supreme Court held that the vehicle’s role in the accident need not be active for the claimant’s injuries to have been “caused by” an auto accident. That decision interpreted the phrase in the remedial legislative context of Québec no-fault insurance.
- [101] In *Citadel General Assurance Co. v. Vytlingam*, 2007 SCC 46, [2007] 3 S.C.R. 373, the Supreme Court considered whether the Ontario OPCF 44R underinsured motorist coverage form covered the liability of teenagers throwing boulders onto an interstate highway in North Carolina, for catastrophic damages of the Ontario residents whose car they struck. Interpreting the words, “arising directly or indirectly from the use or operation of an automobile” in relation to the injuries, Binnie J. stated, at paras. 25 and 31, that the causal connection must link fault “as a *motorist*” during “a motoring activity.”¹

¹ In para. 29, Binnie J. seems to have equated the “but for” test for tort liability with “incidental or fortuitous.” This comment appears to have described the fallacy that the teens would not have thrown boulders onto the interstate if they did not transport them to the overpass using a motor

- [102] In *Lumbermens Mutual Casualty Co. v. Herbison*, 2007 SCC 47, [2007] 3 S.C.R. 393, at para. 14, the Supreme Court considered a gunshot after the defendant exited his vehicle to have been an independent act outside the scope of automobile liability insurance.
- [103] In *Russo v. John Doe*, 2009 ONCA 305, 95 O.R. (3d) 138, the Court of Appeal upheld the dismissal of a claim by a paraplegic victim of a drive-by shooting. At para. 19, the court distinguished *Amos* as applicable to no-fault insurance but not to underinsured motorist coverage. Because the latter required tortious use or operation of a motor vehicle, the shooting was an intervening event breaking the chain of causation from the conduct of the driver.
- [104] These cases illustrate how different legislative schemes and legal contexts have influenced the interpretation of various relational expressions. Subject to that caution, courts can attribute the tightening of the causal link from *Amos* to *Chisholm*, in similar legislative contexts, to the change in wording from “directly or indirectly” to “directly.”
- [105] Contextually, the insurer can narrow the scope of insurance by using words such as “directly” (v. “indirectly”) or expand it with words such as “a” (v. “the” or “sole”) when defining what a policy covers. The danger of drawing on the automobile cases to construe the Certas property and business interruption coverages is that identical words can have different meanings in different contexts. In the absence of the clear wording signifying an intent to narrow or to expand the scope of coverage, jurisprudential comparisons of phrases such as “as a result of” with others such as “arising from” and “caused by” can resemble a metaphysical examination of proximity between damage and insured peril that courts should avoid: *Derksen*, at para. 36; *Co-operators Life Insurance Co. v. Gibbens*, 2009 SCC 59, [2009] 3 S.C.R. 605, at para. 56.
- [106] The case law is helpful to gauge the scope of coverage, but none of it appeared to be binding here. I will therefore apply the general interpretive principles, starting with the ordinary and grammatical meaning of the phrase and moving to judicial methods of resolving ambiguities, only as required.

(iii) “as a result of” – its meaning in the Certas business interruption coverage

- [107] In the Certas business interruption form, the sequential phrase, “as a result of,” is unqualified and appears more inclusive than “direct physical loss or damage from”, if

vehicle. I do not read the comment to have meant that the “but for” test, if a motoring activity was the cause, would not have sufficed to dovetail the tort liability with the OPCF 44R coverage. The Supreme Court had just released *Resurface Corp. v. Hanke*, 2007 SCC 7, [2007] 1 S.C.R. 333, at para. 22, reaffirming the “but for” test as the primary test for causation in tort.

only because of the use of “direct” in the second phrase and its absence from the first. The words “direct” and “from”, when combined imply a causal connection, even though “from” implies circumstance rather than physical force or energy.

- [108] A further clue about Certas’ intention was the choice of an indefinite article, “a” to describe the result differently from “as *the* result of” or “*solely* as a result of.” These distinctions denote that the business interruption beyond the period of inconvenience for repair of the physical damage to the office building could have fallen into the coverage grant. The relation between the business interruption and the loss in terms of the wording, “as a result of,” was not described as “directly or indirectly”. However, the relation between the loss and the insured peril had to be “direct.”
- [109] The elastic nature of the linking phrase “as a result of” as encompassing both direct and indirect relationships between the business interruption and the physical damage or loss, did not necessarily render it ambiguous. It could have had a single meaning that is simply expansive, at least compared to narrower associations such as “caused by.”
- [110] Carr Law’s interpretation of the association imported what appears to be a common-sense logic. As a result of arson fires and a spray of bullets aimed at the law office, the premises had to be restored. Another result was that the law firm had to stop acting for insurance clients against the employers of the arsonists and gunmen, after the clients abruptly fired the firm on their claims files. That drastic collective response from the firm’s clientele could not be attributed to an erosion of goodwill or other decline in business. The process of returning the files took several months, because of ordinary professional responsibilities and administrative compliance. However, the instructions for their return came in immediately.
- [111] The Latin maxim, *post hoc ergo propter hoc*, describes the fallacy of assuming one thing led to another solely because the other occurred after the event. The maxim does not apply here. In the absence of the need for a “direct” result, the insurer clients’ concerted reactions after the IBC meeting were sufficiently related to the arson and gun attacks on the building that the court should conclude the pulling of the files was *a* result of the criminally caused property loss.
- [112] Carr Law’s blown out front door from a spray of bullets prompted the immediate response of all the clients, in fear that their claims offices would be targeted next. Neither side presented evidence from the insurers on this point. There was no written or other express evidence supporting Ms. Carr’s evidence that the insurers instructed her to return all their files as a result of the attack on Carr Law’s office, out of fear that the claims offices would be targeted next. Certas did not argue that the basis for the clients’ response to the attack could be the subject of a genuine issue requiring trial, possibly because it was its summary judgment motion. I will not look behind the tactical decision not to challenge Ms. Carr’s evidence, either in Certas’ reply affidavit material or on cross-examination of Ms. Carr.

- [113] If I am incorrect in accepting that there was no genuine issue requiring trial to find that the immediate collapse of the firm's book of business was the clients' immediate response to the arson and gun attacks, the fact-finding powers under r. 20.04(2.1) allow me to draw the reasonable inference that the clients pulled the files *because of those attacks* and the fear of similar reprisals to their claims offices. Because Certas was one of the clients who withdrew their files, it could have provided responding evidence that this response to the gun attack was not prompted by fear that its claims offices would be targeted next, if it continued to employ the firm using Certas' office address on court forms. Had Certas provided such evidence, it would have been subject to cross-examination.
- [114] Certas' swift decision to pull its files from Carr Law, in response to the arson and gun attacks, was reasonable in the circumstances. But it also provided objective evidence of the immediate result of the incident outside the mixed subjective and objective decision-making of Ms. Carr and her colleagues. They wanted to continue the firm beyond the several months it took to return the files. It was the insurers' actions that stopped that continuity. At the very least, the business was interrupted for several months for the orderly return of the files. Once that interruption occurred, its duration was to be determined by the indemnity provisions of the business interruption form, not by the insuring agreement.
- [115] Any attempt by Certas to limit the scope of what "a result" amounted to be in this case required a departure from the ordinary and grammatical meaning. These included reading in the "direct" connection, between the business shutdown and the physical property damage, that the text did not contain. Certas controlled the scope of the indemnity for business loss by reference to the results of the firm returning to pre-loss levels and by imposing a 12-month limit, not by any physical constraint on premises occupation. I would therefore conclude that the ordinary and grammatical meaning of the Certas standard form wording applied to an extended shutdown of the firm, including closure, in terms of an insurance defence firm acting for insurers against tow truck operators with ties to organized crime.
- [116] If the meaning of "as a result of" were not clear, it takes no significant effort to resolve any ambiguity based on reasonable expectations. Certas could have excluded criminal perils of property damage altogether. By including criminal perils that are reported to the insurer and to police, it accepted the risks associated with property damage by criminal causes. The effects of such damage are different from, say, a fire started by faulty wiring. Certas could reasonably foresee that criminal attacks can deter the resumption of a business for longer than it takes to repair the premises. This expectation is consistent with the law firm's desire to protect its business interests in operating in a risky legal field. Different property losses from insured perils have the potential to affect businesses differently. A business' window can be shattered by a rock or by a spray of bullets. The replacement of it will take the same time, but the reopening of the business can have very different timelines.

- [117] I now return to the passage in Major J.'s decision in *Amos* connecting the shooting to the assailants' failure to gain entry to the van. The statement reminds us that, when considering human factors during events, intention and independence are frequent fellow travellers that should not be mistaken for the other. He held that the shooting was the direct result of the assailants' failure to gain entry to the van, i.e. a means of immobilizing the driver from getting away. The exception to the criminal act exclusion for reported incidents meant that the insurance covered perils such as arson and gunshot attacks, provided physical damage ensued and provided the insured reported the incidents to police and to the insurer. The insurer clients' abrupt response to the report of the gun attack was a natural – if cruel – result of the damage inflicted on the property.
- [118] The coverage for excepted reported criminal acts should not be construed as insurance for the specific peril. It certainly did not afford insurance for criminal acts in the absence of physical property damage. The exception only brought that specific peril back into the general property insurance coverage for all risks. The effect of this appreciation of the property coverage is to attenuate the reasonable expectations of the parties when considering the peril. Certas did not collect a separate or specific premium for the risk of criminal attacks. It cannot be accused of pocketing a premium and taking away coverage, as Estey J. found in *Consolidated Bathurst*, at pp. 901-902. However, it did assume the risk by carving out the exception to the exclusion.
- [119] Starting with the premise that Certas accepted the risks associated with reported criminal attacks, it follows that it also accepted the risk that damage from targeted arson and gun attacks could result in extended shutdown of the business associated with the reluctance of customers, staff, and associates to return to the office to carry on, as if nothing had happened. The requirement of physical property damage for the interruption of the business did not limit the insurer's responsibility to pay, once the damage triggered that duty. The wording "as a result of" in the insuring agreement clause was not followed by words limiting the *resultant* effect on physical occupation status. For example, the policy could have included the following words to effect such a limitation:
- ... in the event that the business of the Insured is interrupted as a result of **[being rendered unsuitable for occupation by]** a direct physical loss or damage from an insured peril, the Insurer shall pay ...
- [120] Despite my appreciation of Certas' reading of the coverage form as more firmly constrained by the Commercial Property Broad Form, the wording cannot escape the reasonable expectation that property damage inflicted by organized criminals would deter resumption of business well beyond the restoration period. In the circumstances of this case, the delay in resumption of business would in large part be defined by Carr Law's reinvention of its practice. This was not a subjective exigency on the firm's part. It resisted that outcome and tried to find a way to work on the client files from unknown locations.
- [121] Because of my analysis of the phrase, "as a result of," based on plain wording and on reasonable expectations, I need not resort to more interventionist interpretive strategies

such as the *contra proferentem* rule. Arguably, such rules do not apply. A broadly worded connecting phrase is not ambiguous. To the extent that there may be room for construing ambiguity, the rule operates against Certas as the drawer of the standard-form contract.

4. EXCLUSION FOR LOSS OF USE OR OCCUPATION UNDER S. 6B I) OF THE COMMERCIAL PROPERTY BROAD FORM

- [122] Certas equated the future peril as a loss of use or occupancy connected with the office building separated from physical loss or damage. The Broad Form property coverage perils exclusion in s. 6B i) for “delay, loss of market, or loss of use or occupancy” applied only to the extent that Carr Law’s property was not insured for damage or loss caused by these incorporeal causes.
- [123] This exclusion may be redundant. The indemnity agreement for the business interruption form only applied to interruption of business as a result of physical loss or damage. If s. 6B i) did apply, it would not affect the requirement of physical loss or damage. Had the law firm shut down solely because of threats of harm, client withdrawal of files, or employee unwillingness to resume occupation of the office, without the damage to the building, the business interruption form would not afford coverage for Carr Law’s economic loss.
- [124] If I am correct in my interpretation of the coverage grant, that the business interruption insurance afforded indemnity for extended business loss “as a result of” the physical damage in the form of arson fires and gunfire, I would not construe the s. 6B i) exclusion as derogating from that coverage. Disallowing a claim for business loss from “delay, loss of market, or loss of use or occupancy” if it followed or coincided with physical property damage that interrupted the business’ functioning would effectively nullify all business interruption coverage. Delay in ability to provide product or services, the associated withdrawal from the market, or the inability to occupy the premises, cover the essential elements of business interruption from insured risks. On the plain reading of the policy forms, the exclusion does not apply. In the event the non-applicability of the exclusion is unclear, it does not take much to appreciate that physical loss followed by delay, market loss, or loss of premises occupancy are reasonable expectations of business interruption coverage.

CONCLUSION

- [125] I conclude that the Certas business interruption coverage afforded insurance for the closure of Carr Law’s operations as an insurance defence law firm, beyond the period required to repair the physical damage to the premises from the criminal attacks. The shutdown of the firm’s legal services operations after the insurer clients withdrew their

files was a result of the property damage to the premises. The Certas motion is dismissed, and Carr Law's request for a declaration of coverage is granted.

- [126] I also accept the joint submission that the coverage determination of the application of the insuring agreement still requires an assessment of damages based on the indemnity provisions of the business interruption form. That assessment could entail further legal interpretation of the insurance wording. Although I am not seized of the damages trial, I am not disqualified from hearing it.
- [127] The quantum of the business loss indemnity was never properly adjusted by Certas. I do not agree with Carr Law's submission that this amounted to bad faith claims handling. While I do question the lack of a formal coverage denial letter, the prejudice to Carr Law is likely reflected in additional legal expenses in preparation of the pleadings and affidavits. I will therefore restrict my decision to the coverage issue and decline to find that Certas acted in bad faith. I appreciate that Certas' rush to the front of the line to withdraw their files may have added salt to Carr Law's wound. However, ultimately that conduct was evidence supporting Carr Law's position that the business loss was a result of the arson and gun attacks on the building and not an independent or subjective response to the overall situation.
- [128] I need not determine whether Certas' breach of the insurance agreement by denying coverage for the subject claim now disqualifies it from relying on the business interruption form to investigate and adjust the financial aspects of the claim. I will leave it to the parties to develop a discovery plan that addresses Certas' needs for defending the damages trial or for settling the claim, either informally or at mandatory mediation.

COSTS

- [129] I encourage the parties to resolve the costs of the motion. If they are unable to agree, the plaintiffs may deliver costs submissions within 14 days of the release of this decision, followed by Certas' submissions 14 days thereafter. The submissions are limited to three pages or less. Unless otherwise advised, I will rely on the costs outlines already uploaded to Case Center.

Released: June 4, 2026

CITATION: Carr Law P.C. et al. v. Certas Home and Auto Ins. Co., 2026 ONSC 2203

COURT FILE NO.: CV-20-00651654-0000

DATE: 20260604

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

CARR LAW PROFESSIONAL CORPORATION and
1883114 ONTARIO LTD.

Plaintiffs

– and –

CERTAS HOME AND AUTO INSURANCE
COMPANY o/a DESJARDINS INSURANCE
COMPANY

Defendant

REASONS FOR JUDGMENT

Akazaki J.

Released: June 4, 2026