



# Civil Resolution Tribunal

Date Issued: April 8, 2020

File: SC-2019-009553

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Marcial v. Intact Insurance Company*, 2020 BCCRT 386

BETWEEN:

MARLON MARCIAL

**APPLICANT**

AND:

INTACT INSURANCE COMPANY AND, IN FRENCH, INTACT  
COMPAGNIE D'ASSURANCE

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Lynn Scrivener

## INTRODUCTION

1. This dispute is about the cost of assessing a damaged boat. The applicant, Marlon Marcial, says that he purchased an insurance policy from the respondent, Intact Insurance Company and, in French, Intact Compagnie d'assurance, for his boat. The applicant says that he encountered difficulties with the boat and was advised by

the respondent's employee to have it assessed to determine the cause of the problem. The applicant says he was told that the cost of the assessment would be covered by his insurance, but that the respondent has declined to reimburse him. The applicant asks for an order that the respondent pay him the \$2,577.21 cost of the assessment. The respondent denies that it told the applicant that the assessment costs would be covered, and says that it is not responsible for the claim.

2. The applicant is self-represented. The respondent is represented by an employee.

## **JURISDICTION AND PROCEDURE**

3. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
4. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
5. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
6. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

## **ISSUE**

7. The issue in this dispute is whether the respondent should reimburse the applicant for \$2,577.21 in vessel assessment costs.

## **EVIDENCE AND ANALYSIS**

8. In a civil dispute like this one, an applicant bears the burden of proof on a balance of probabilities. The parties provided evidence and submissions in support of their positions. While I have considered all of this information, I will refer to only what is necessary to provide context to my decision.
9. In November of 2018, the applicant purchased a 12-month boat insurance policy from the respondent. The policy covered physical loss and damage, with a number of exclusions. The policy excluded coverage for a number of things, including rust, corrosion, and failure to maintain the boat. Although the policy stated that the respondent has the right to inspect the boat before any repairs are carried out, it did not address the responsibility for inspection or assessment costs.
10. In early August of 2019, the applicant took his boat out for an afternoon cruise. He experienced trouble with his engine and noticed water ingress on his boat, including in the engine compartment. The applicant arranged for an emergency tow to return to shore.
11. The applicant contacted the respondent as he was unsure what to do to start a claim. The respondent's claims analyst, Mr. D, sent the applicant an email on August 7, 2019 in which he stated that "[a]s vessel owner, you may need to authorize the repairer to undertake any necessary works/disassembly to mitigate damage and determine the cause and extent of loss." The email did not state that the claim had been accepted or that the assessment costs would be covered by the policy.
12. The investigation of the boat's problem involved 2 different assessors. After an initial assessment, the applicant gave permission for the boat's engine to be

dismantled in order to determine the cause of the problem. This more invasive inspection revealed corrosion in several areas of the engine.

13. On September 9, 2019, Mr. D wrote to the applicant to advise that the claim had been denied because the cause of the problem was corrosion and a failure to maintain, which were not covered by the policy. Although coverage for the repairs was denied, Mr. D stated that the applicant could submit a receipt for his towing expenses.
14. It appears that the applicant did receive reimbursement of his towing costs. In this dispute, the applicant seeks reimbursement of the \$2,577.21 assessment costs. The applicant says that the respondent, the assessors, and an insurance broker told him that the assessment costs would be covered. If this was not the case, the applicant says that this should have been communicated to him before he approved the work on his boat. The respondent's position is that it did not tell the applicant that the assessment costs would be covered.
15. A review of Mr. D's messages shows that he did not state that the claim had been accepted or that the assessment costs would be covered. As noted above, Mr. D advised the applicant that he may need to authorize work to determine the cause of the problem. The fact that the applicant later gave specific approval for the work to dismantle the engine is, in my view, indicative that the cost would be borne by the applicant, not the respondent.
16. It is not clear to me how the assessors or the insurance broker could be in a position to bind the respondent to a coverage decision. In any event, I find that the evidence before me does not establish that the assessors or insurance broker confirmed that the insurance company would cover the assessment costs. In an August 9, 2019 letter, the first assessor set out its terms of service, which state that the applicant is responsible for costs it incurs, subject to reimbursement for the portion of the costs covered by the policy "should the loss be recoverable". This letter specifically stated that its involvement "does not constitute an admission of coverage" and that it "cannot and will not comment on coverage issues". In a

January 15, 2020 email, an employee of the first assessor stated that he told the applicant that the “tear down costs” would be covered as part of an accepted claim, but never told him that the claim had been accepted.

17. The second assessor’s service coordinator emailed the applicant on August 29, 2019 and referred to an insurance company paying for certain items “if coverage is provided” and as “part of an approved insurance claim”. The message did not state that the assessment costs would be covered. The evidence before me also contains a January 17, 2020 email message from an insurance broker who stated that, although she spoke to the applicant about the claim, she did not confirm coverage.
18. Based on the evidence before me, I find that Mr. D, the insurance broker, and the assessors did not tell the applicant that the assessment costs would be covered by the respondent through his boat insurance policy. As the applicant has not proven that he had an agreement with the respondent about responsibility for these costs, I dismiss the applicant’s claim.
19. Under section 49 of the CRTA and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. As the applicant was not successful, I dismiss his claim for reimbursement of tribunal fees.

## **ORDER**

20. I dismiss the applicant’s claims and this dispute.

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Lynn Scrivener, Tribunal Member